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JOURNAL

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OCTOBER, 1908

EDITORIAL NOTES

Our Responsibilities.

Among the leading writers upon the subject of Imperial Federation and certainly its most eloquent advocate, is Mr. F. Blake Crofton, whose article, "Our Unworthy Status," will be found in the present number of the JOURNAL. He presents matters of Imperial interest in such a way as to extend the horizon of our thoughts, and few of his readers will object to being scolded by such an ardent believer in "full nationhood." If the public men of Canada would cultivate the fine sense of Imperial responsibility displayed by Mr. Crofton in his vigorous efforts for many years past to bring about a closer union of the Empire, they would, as he claims for Joseph Howe, rise above their environment and obtain his admirable insight into national and international problems.

Mr. Crofton's thoughtful article should have a wholesome effect, and the more so, the more it is circulated. We cordially invite leading Canadian newspapers to publish "Our Unworthy Status."

Succession Duty.

The article in this number of the JOURNAL by Mr. R. C. Smith is of exceeding interest, in view of a recent decision of the Privy Council defining the rights of Provinces in the levying of succession duty. The desire of each province to profit by the tax imposed upon inherited wealth has resulted in many cases of manifest injustice, and something must be done to prevent the possibility of any part of an estate being taxed twice. Shares in banks and railways will cease to be regarded as a desirable investment, if their value is to be imperilled by the rapacity of the collectors of succession duty.

A tax upon large fortunes was suggested by President Roosevelt to the United States Government some years ago, but he omitted to state what, in his opinion, constituted the fortune "swollen beyond all healthy limits." Some humorist proposed to leave the matter to popular vote and thereby give to everyone a chance to limit the wealth of the other fellow.

Mr. Smith virtually admits the right of a province to take for the common good a slice of the fortune accumulated by the millionaire, but, at the same time, he gives expression to the natural irritation caused by the unsatisfactory working of the present plan of collection of succession duty.

The decision of the Judicial Committee of the Privy Council being that a provincial Government cannot collect succession duty on property situate without the boundary of the province, it follows that, in future, legislators in quest of revenue will have to rest satisfied with a direct tax on property domiciled within their province.

Bankers and business men will find food for thought in the instructive comments by a leading Canadian counsel on a constant cause of worriment and vexation to the heirs and executors of big estates.

Currency Students.

The sub-committee of the National Monetary Commission has been visiting Europe for the following purposes:—to obtain more complete and accurate information than is now available with reference to the monetary and banking systems of the leading commercial nations. It is also intended to examine thoroughly the methods in use for the collection and distribution of public revenues in the leading countries of Europe. The sub-committee in question has Senator Aldrich as cicerone.

The appointment and mission of the Monetary Commission referred to does not seem to meet with favour. The *Bankers' Magazine* says, "We hope the trip may do Mr. Aldrich and his colleagues much good. They seem incapable of learning anything at home." Possibly the atmosphere of Piccadilly or the Rue de la Paix may be more conducive to the acquirement of financial wisdom. The members of the commission will find that the European banks, as a rule, do not issue bond secured currency. They will find, also, that the finance ministers do not lock up public funds in boxes and sit upon them, and that they are not engaged in aiding the money market.

The *Bankers' Magazine* thinks that the Commission could learn "as much at home as abroad," and, incidentally, the cruel critic of the Commission says that its appointment must be remembered "with deep humiliation by every intelligent and patriotic American." The chances of concerted action with a view to securing an improved monetary banking system are slim indeed. The *Bankers' Magazine* closes its criticism of the Monetary Commission with this lament. "Some day we shall pay the penalty of permitting Aldrich and Vreeland to shape our currency legislation and turn to Fowler, Forgan, White and Conant to point out release."

The Banks of England.

The London *Economist* has recently published some banking statistics which afford proof of the increase in banking investments in Great Britain, England, Wales, Scotland and Ireland. They support seventy-two banks having some 6,800 branches. These banks have a combined paid-up capital of $395,000,000, with a market value three times in excess of the sum named.

The chartered banks in Canada are thirty-four in number, with a paid up capital of about $98,000,000. The branches are about 1,913, distributed as follows:—

Ontario	900
Quebec	301
Nova Scotia	104
New Brunswick	58
Prince Edward Island	15
Manitoba	161
Alberta	101
Saskatchewan	125
British Columbia	98
Yukon Territory	3
Newfoundland	5
Elsewhere	42

As others see us.

Mr. E. D. Hulbert, vice-president of the Merchants Loan and Trust Co., of Chicago, is not a believer in the branch banking system. In a recent address delivered before some brother bankers, he says that when a man rises up in the United States to defend the banking system of that country he is wont to point to the system of Canada much as the picture of an angel is pointed out to a bad boy. Mr. Hulbert admits that there is much in the branch banking system that appeals to the imagination. He says that branches of a great bank having its head office in some financial centre gives to the small community, not only a place of deposit, but affords banking facilities to a small community that it could never hope to possess under a system of small and independent banks.

But his fair statement of the advantages for the branch system is offset by his evident prejudice against the branch system. Mr. Hulbert says that the very nature of such a system is to draw funds from the small place for the benefit of the large—to draw from the weak for the benefit of the strong. He uses the octopus as an illustration of the dangers of the centralized system. Mr. Hulbert says, "The octopus is nature's

experiment in the branch system. When an octopus gets his eye on an adjacent oyster bed, and feels like establishing a branch in that locality, we might imagine him saying to the oysters, 'You fellows over there are pretty weak; you have not much strength or many brains. Now I have a surplus of both. It'll be a great thing for you to have me establish a branch in your community. I have branches all round, and, when I get more than I want to eat, I can pass it along to you. Besides, when the storm comes you will have me to take care of you.' That sounds all right, but when the connection is made, it is made for the benefit of the octopus and not for the oysters."

The practical work of the branch system in Canada does not warrant the conclusions arrived at by Mr. Hulbert. He must admit that the financial system of a country has a great influence upon its growth and prosperity, and while it cannot be claimed that Canadian communities show superior growth and prosperity to places having similar resources and natural advantages in the United States, our country certainly enjoys greater freedom from panics begotten of fright and lack of confidence in the banking and currency system of the country.

J. K.

THE NEGOTIABILITY OF DEPOSIT RECEIPTS.

By W. F. Chipman, B.C.L.

ON pages 155 and following of "Canadian Banking Practice" (Questions 249-251), the point is raised as to whether deposit receipts are negotiable. An answer is given in the negative upon consideration of the following form of receipt:

"Received from J. Smith on deposit, for a period of not less than three months from this date, and subject thereafter to ten days' notice of requirement or withdrawal, the sum of one hundred dollars, to be accounted for upon surrender of this certificate to J. Smith with interest (until date of notice only) at the rate of three per cent."

This answer was supported by the following reasons:

"With regard to the receipt in the form submitted, we should not suppose that such a receipt would be negotiable. It would only have that quality if it could be held to be a promissory note, and we think that under the rulings in the cases referred to in the reply to Question 249, the promise to 'account' for the amount to J. Smith cannot be held to be an unconditional promise to pay to the holder of the receipt. For the same reason it is not transferable by endorsement, in the sense in which that word is used in the Bills of Exchange Act, but the claim which it represents may be transferred by a single assignment endorsed on the document by the depositor.

"The practical questions arising out of these points are as to the obligation of the bank holding the money to account for the same to an endorsee, or its rights if it should make payment to an endorsee.

"A mere signature in blank is not in itself authority to the bank to pay the party holding the document, and it would probably not protect the paying bank if, as a matter of fact, the party receiving the money had no right to receive it. An endorsement in blank might, however, be a very important link in the chain of proof advanced by the party holding a

deposit receipt so endorsed, in support of a claim that the money had been duly assigned to him. This does not affect the bank's right to refuse to recognize the assignment without further proof.

"If the receipt is endorsed by the depositor 'pay to C. D. or order,' payment to C. D. would probably be good, as such an endorsement would, doubtless, be held to constitute C. D. the agent of the depositor to collect the money, and the depositor could not dispute what was done in consequence of his own act; but, for the reason mentioned below, it would be well to take the endorsee's receipt for the money as 'on behalf of' the depositor.

"If the receipt is presented for payment by another bank, bearing the endorsement of the depositor, either in blank or with an order to pay to such bank, payment might, no doubt, be safely made to the bank presenting the receipt, but it would be well to require a receipt for the money in which it is declared that the receiving bank is acting as an agent for the depositor, *e.g.*, 'Received from ———, on behalf of A. B. (the depositor), the amount of the within deposit receipt and interest.' The object of this is to ensure that if there is any mistake in the matter the bank receiving the money will be liable either to the depositor, as for money received on his account, or to return the amount as paid under a mistake. It is to be noted that a guarantee of the endorsement does not cover this point; that merely protects against forgery, and does not guarantee that the bank has authority to collect the amount."

In view of the fact that Messrs. Maclaren and Falconbridge, in discussing our Bank Act, both lean to the contrary opinion, that such instruments are negotiable unless expressly made otherwise, some examination of the law on the subject may be profitable.

In England it is settled law that the receipt is not negotiable, and that the transfer of it confers no right to the deposit account.* Of course the right of the depositor against the bank can be assigned or bequeathed with the due formalities, but the bank will not effectually discharge its obligation to the

* In re Dillon (1890), Ch. D. 76; Paget, Banking, p. 20; Hart, Banking, p. 560.

depositor by paying, in good faith and without notice of anything wrong, the amount of the deposit to an endorsee of the document, if, in fact, the endorsee did not hold it as one entitled to receive the funds. The utmost that the endorsement can purport is an agency to receive; and, without further evidence, the bank can only deal with the endorsee as with an agent, and must take all the precautions required in such circumstances. There might, indeed, arise a question of estoppel; and the bank might be entitled to urge as a good defense, where it had acted differently, that the depositor's general attitude had misled it into giving a special interpretation to the endorsement. But this point would be based on facts extraneous to the endorsement itself; the general principle still holding good that the instrument was not negotiable.

It is true that there is the isolated case of Woodhams *vs.* Anglo-Australian Insurance Co., † which appears to be in conflict. Vice-Chancellor Stuart there declared that "a deposit note for money, like a deposit note for goods, passes by delivery of the instrument, and requires no assignment at all." But a scrutiny of the case discloses circumstances which amounted to an equitable transfer; and the judgment especially referred to the fact that a notice of transfer was given to and accepted by the defendant, who, it is important to observe, was disputing an action on the part, not of the depositor, but of the transferee, with respect to whom it had tied its own hands. Moreover, this dictum has been interpreted for us by a Canadian court * as meaning simply that a valid equitable charge or lien may be created upon instruments of this nature, and upon the funds or goods thereby represented, by mere delivery; and not as implying that any holder was entitled to payment.

American law, however, is nearly all the other way. The Pennsylvania case of Patterson *vs.* Poindexter † and the succeeding judgments upon the point in that state, are alone in holding that these certificates of deposit are not promissory notes. The other states of the Union all construe them to be so, and thus,

† (1862), 5 L.T., N.S., 628.

* Mander v. Royal Can. Bk. (1869), 20 U.C.C.P., 129.

† 6 W. & S. (Pa.), 227.

of course, negotiable. The reason appears to be mainly an historical one. The American writers ‡ trace their origin to the practice of England's first bankers, the goldsmiths, who were in the habit of giving, for moneys deposited with them, receipts in the form of promissory notes payable to the bearer on demand, or to the depositor or his order. An old statute, say these writers, § put them in the same category with promissory notes as bills of exchange. From that time they have continued to be negotiable instruments. But the statute of Anne hardly bears out this theory. It deals simply with promissory notes, and declares that these, by whomsoever signed, whether by private persons, public bodies, corporations, bankers, goldsmiths, merchants or traders, shall be thenceforth negotiable as bills of exchange; but it in no way declares that deposit receipts are such promissory notes, or in any way mentions them. If this be the chief reason for the rise of the American view, it is a shaky foundation for so wide a practice.

Our own courts, in the earlier cases, universally took the English view.* It must be remarked, however, that the instruments dealt with in those cases do not seem to have been made payable to bearer or to order. But in the Quebec case of Voyer vs. Richer † the receipt was made payable to order, and here it was held by the Courts of Review and King's Bench that the document was neither a promissory note nor any other sort of negotiable instrument. It is true that when the case reached the Privy Council it was said that there was high authority for the view in favour of negotiability, but the judgment turned upon another point. In the same sentence of the judgment it was remarked that such a document was not in use in England, and no reference was made to English decisions, American authorities alone having been looked at. It cannot be doubted that if the point came before the same court to-day it would be met by a very different attitude.

There remains the Ontario case, *Re* Central Bank,* in

‡ Cf. Daniel, "Negotiable Instruments," 5th Ed., Vol. II, § 1698a.

§ 3 and 4 Anne C. 58.

* Mander v. Royal Can. Bk., 20 V.C.C.P., 125 (1869); Bk. of Montreal v. Little, 17 Grant, 313 (1870); Lee v. Bk. B. N. A., 30 V.C.C.P., 255 (1879).

† 13 L.C.J., 213 (1869, and L.R. 5th P.C. 461 (1874).

* 17 O.R., 574 (1889).

which the judgment was given a year before that in the decisive English case of Dillon, referred to above. But while this case apparently laid down a general principle that deposit receipts are negotiable instruments as being promissory notes, a closer examination shews the judgment to have been so much influenced by the special facts in question as hardly to be entitled to more than a particular application.

The court, indeed, declared that there was "no public or financial policy against these documents being so framed as to circulate from hand to hand"; and referred to the provision of the Canadian Stamp Act, whereby it was enacted that "every receipt for money given by any bank or person, which shall entitle the person paying such money, or the bearer of such receipt, to receive the like sum from any third person, shall be deemed a bill of exchange, or draft chargeable with duty under this Act."† But whatever instrument is here being described, it is obviously not the deposit receipt which we are now discussing; for it entitles the depositor or bearer to receive the like sum, not from the bank, but from some third person. Of course such a paper must be, to a certain extent, negotiated before it can be effective against this third person, and is in its very nature a bill of exchange. It is quite different from the case where the bank and the depositor are the only persons originally involved.

The court then goes on to say that, in the circumstances before it, the document "was intended to be of transmissible character, and was issued avowedly for the purpose of raising money upon it by means of negotiation on the part of the apparent depositor." Leaving aside for the moment questions of public policy, we have here the determining factor of the case. All that remains to be enquired into is the point as to whether the document was as transmissible in form as in intention. It is only on this premise that the court's subsequent remarks are justifiable. "It is of elementary knowledge," continues the judgment, "that if the writing contains the essential requisites, no mere form of words is needed to constitute a promissory note. This paper is called a 'deposit receipt,' but it may, nevertheless, be a promissory note. If you find an

† 27-28 V., c. 4, § 3 (1864).

unconditional promise to pay a certain sum of money to a person, or his order, at a time which is sure to happen, then to such a document the law will attribute the property of negotiability as a promissory note."

To this it is essential to add that this negotiable form must contain an intention of negotiability, of which the form is simply the evidence. "It is difficult to lay down a rule which shall be applicable to all cases," says Chief Baron Pollock, in the case of Sibree *vs.* Tripp *; "but it seems to me that a promissory note, whether referred to in the Statute of Anne or in the text-books, means something which the parties *intend* to be a promissory note. We cannot suppose that the Legislature intended to prevent parties from making written contracts relating to the payment of money, other than bills and notes; and this appears to me to be merely an instrument recording the agreement of the parties in respect of a certain deposit of money, the consideration of which is stated in the memorandum itself, and to be rather an agreement than a promissory note." Compare also the American case of Overton *vs.* Tyler * where it was said that "an instrument is not a promissory note within the Statute of Anne, if it be evident on the construction of the contract, that the parties did not mean to make a promissory note, but a special agreement."

The case of the Central Bank seems, therefore, to be of little value as an authority, save as holding that the form of the receipt is sufficient to make it negotiable if the intention shall warrant. Cases where no such intention was manifest at the time of making the receipt do not come within the four corners of this judgment.

Against this we have it laid down by a Manitoba court in 1897 * that a deposit receipt is not a negotiable instrument, and cannot be transferred by endorsement and delivery.

As to the question of form there is less to be said. While the stipulation, that the certificate must be surrendered before the bank will repay the deposit, seems at first sight opposed to the unconditional nature of a promissory note, and while a provision for ten days notice of withdrawal hardly appears

* 15 M. and D., p. 28.
* 3 Parr, 346.
* Re Commercial Bank, 11 Man. R., 496.

either to make the instrument one payable on demand, or to amount to that statement of a fixed or determinable future time which, otherwise, the face of the note ought to reveal; yet the weight of authority seems to be in the sense that a deposit receipt made payable to order is, *in form,* negotiable. It is upon this score that the earlier authorities distinguished between a receipt made payable to order and one drawn in the form cited at the head of this article. But since the Bills of Exchange Act does not require that the words "order" or "bearer" should be used in order to make a promissory note, this distinction is no longer of importance, save in so far as the use of these words when read with the context can warrant the interpretation of negotiability rather than of the mere creation of an agency to receive. Hence, whatever the form may be, we are brought back to the principle that it is the intention of the parties at the time of making the certificate that alone can determine the character of the instrument. Arrived at this point, it must be admitted at once that the question of negotiability hardly ever enters the heads of the two parties at the time of making a deposit of this nature and of writing out a receipt for it. The loan is made not for the sake of creating a current account, but with an eye to earning interest. The receipt, when taken, is intended to be held in no way as a title save as between the bank and the depositor or his legal representatives.

So far we have been considering simply the character and form of the instrument. But it is a question whether it is legally possible for a document of this nature to be negotiable. Public policy and the limitations put upon the powers of banks, may have something to say. Mr. Maclaren discusses deposit receipts under the head of a bank's power "to deal in" bills of exchange, promissory notes and other negotiable securities. But to "deal in" is not to create; and, before they can be dealt in, these certificates must be created. Where, in the Bank Act, is any authority to create them as negotiable instruments, as promissory notes?

For there is a clear distinction to be made between those promissory notes which a bank may make as pure business paper, in order to finance its general undertakings as a commercial corporation, and those negotiable notes with which it

carries on its essentially banking business. The question arises as to whether there is any authority for instruments of the latter class outside the provisions of section 61 of the Bank Act. As everybody knows, notes under that section must be payable to bearer on demand and must be in denominations of $5 or multiples of $5; to say nothing of other conditions. How do these restrictions square with the nature of a deposit receipt, which invariably requires a notice of withdrawal, and which never concerns itself with such niceties as a few dollars more or less? Or, how are deposit receipts to appear in the bank's monthly returns? Is the bank to find out how many of its deposit receipts are endorsed, and add them accordingly to the number of its notes in circulation? If these questions be warranted at all, they reduce the matter to an absurdity. Yet it is difficult to see how they can be ignored.

The point has never been raised in our courts, but has been considered in the States. Mr. Morse, in his book on "Banks and Banking" (sect. 51), while concluding that, on the whole, and in virtue of the wording of the statute concerned, these certificates do not, if negotiated, come into conflict with the American statutory law, nevertheless notes the Massachusetts case where, under a statute against the circulation of bills and notes not payable on demand, a bank has no power to issue time certificates of deposit, and if it does they are void. Daniel * refers to a New York case where, the statute law having pronounced a draft or note issued by a bank, payable at a certain time after date, to be void, it was held that a certificate of deposit, payable to the order of a particular person six months after date, came within its prohibition and was void. And when Sir John Paget, after declaring that the deposit receipt is not negotiable, goes on to say that "a deposit receipt payable to bearer on demand would probably constitute an infringement of the Bank Charter Act, 1884,"— the English Act regulating the issue of bank notes — there is reason to believe that this somewhat cryptic assertion is interpretable as pronouncing that, as soon as the terms of a deposit receipt give it the perfect character of negotiability, it at once becomes illegal. The whole point of all the restrictive statutes in this connection is to prevent the putting into circulation by banks of any instruments of a promissory nature made in

the carrying on of routine banking business by the staff of the bank, as distinguished from those which may be given by the directors as an acknowledgment of a loan to meet the bank's liabilities, unless those instruments bear the peculiar character of bank notes and are controllable as such.

There are thus three points involved in this discussion: firstly, the form of negotiability; secondly, the intention of negotiability, and, thirdly, the legality of it. If, under the last head, the suggestions here made are valid, the matter is closed at once, and the certificates are not negotiable. But the reasons that can be advanced under the second head seem to be quite sufficient to establish the point, where special circumstances do not import a negotiable intention into the deed. And it may be added that if the deposit receipt were a promissory note we should at once be exposed to complicated questions of prescription which are altogether at variance with the spirit of a deposit; and, of course, in conflict with §126 of the Bank Act.

Altogether, therefore, the position taken up by the writers of the answer given in "Canadian Banking Practice" to the question before us, seems to be the only reasonable one. There is no Canadian jurisprudence that can properly be cited against it; and, if, indeed, the matter be open to doubt, the consistent maintenance of the negative attitude on the part of the banks could hardly fail of influencing the law in its direction as a business custom. From the point of view of the banks, the negative position is undoubtedly the safer of the two alternatives.

If so, the receipt can only be transferred by an assignment in accordance with the civil laws of the several provinces. In the Province of Quebec service of the assignment or the institution of an action against the bank would be a prerequisite to a valid possession against third parties. A simple endorsement would be at the most an appointment of an agent to receive, subject, like all mandates, to extinction by revocation, by the death of the mandator, and by the other causes that put an end to these contracts. Except in special circumstances, the endorsement would not enable the bank to deal with an endorsee save as with a representative of the depositor.

SUCCESSION DUTIES AND THE IMPOSITION OF SAME.

By R. C. Smith, K.C.

SUCCESSION duties, which are now generally admitted to be fair and reasonable taxation, have in Canada frequently become excessive and vexatious by reason of dual imposition. In our confederation we have nine provinces, each of them possessing as ample powers of "direct taxation within the province" as the Imperial Parliament itself possesses. A principle of International law, to which I shall later venture to refer more fully, is that while immovable property is governed by the law of the place where it is situated, movable property is governed by the law of the domicile of its owner, and is not deemed to have any *situs* apart from that domicile. This principle is expressed in the maxim *mobilia sequunter personam.* Notwithstanding this principle, which is recognized by every writer on private international law, we find that every state claims absolute jurisdiction over all the property, immovable and movable, which is physically situated within its territory. To put the question in the concrete in the matter of succession duties, we have each of the provinces of the Dominion claiming the power—I do not know whether they all have exercised it—of imposing duties upon successions devolving within it, including all the property of the succession, movable and immovable, within the province, and also all the movable property of the succession wheresoever situated; and at the same time each province claims the power to impose succession duties upon all the property, movable and immovable, situated within its limits and belonging to successions devolving in other provinces or in foregn countries. Thus, the Province of Quebec exacts duties upon the succession of a person dying domiciled in the province, (1) upon all the property, movable and immovable, situated in the province, and (2) upon all the movable property situated in Ontario, Manitoba or anywhere else. The Province of Ontario, in the matter of the same succession, exacts duties

upon all the property, movable and immovable, situated within its limits, although the succession devolved in the Province of Quebec. The converse is true of successions devolving in Ontario. I understand the succession duty laws of other provinces are similar. These impositions are enforced by penalties, by enactments that no property liable to duty shall pass nor shall anyone acquire any title to it until the duty be paid, and by prohibiting banks and other corporations making any transfers of shares until evidence is furnished them that the succession duty has been paid. So a portion of nearly every large succession is compelled to suffer duplicate taxation.

The case of Lambe *vs.* Manuel, decided a few years ago, was followed with much interest in the hope that the judgment of the Privy Council would remove the anomaly. The late Mr. Allan Gilmour died while domiciled in Ottawa, and a portion of his estate consisted of 626 shares of the Merchants Bank of the value of $93,900, and 4,275 shares of the Canadian Bank of Commerce of the value of $306,187, together with a loan secured by hypothec in Montreal. Mr. Lambe, the collector of revenue in Montreal, brought suit against Manuel, Gilmour's executor, to recover the Quebec succession duty upon these three items of the estate, as being liable under the Quebec Succession Duty Act, which at that date read:—(Art. 1191 b, Revised Statutes, Quebec), "All transmissions, owing to death, of the property in, usufruct or enjoyment of, movable or immovable property in the province, shall be liable to the following taxes, etc." The claim to the duty on the bank stocks was based on the fact that the head office of the Merchants Bank was in Montreal, and that, although the head office of the Bank of Commerce was in Toronto, it had a branch in Montreal with a separate stock register and transfer book, and that Mr. Gilmour's shares were, at the time of his death, standing in his name in the Montreal register. Sir Melbourne Tait, in a judgment citing numerous authorities (Q.R., 18 S.C., p. 184), held that the language of the article of the Revised Statutes invoked applied only to a succession devolving in the Province of Quebec. He laid it down that "the rule *mobilia sequunter personam* is well recognized in our law, and also in the law of England, in interpreting the legacy and succession duty acts

in force there," and quoted from Hanson on Death Duties (Ed. 1897, p. 526) :—

"It has already been pointed out (ante, p. 423), that in "order to render personal property liable for duty, it is neces- "sary that it should be situate within this country, and that "as property of a movable nature accompanies, in construction "of law, the person of its owner, the situation of the owner's "domicile at the time of his death, and not the actual local "situation of the property itself, is the true test of its liability "to duty. And with regard to the personal property other than "chattels real of a testator or intestate who dies domiciled "abroad, it is now settled that it is not chargeable with duty "under this Act (that is, the Succession Act) any more than "under the Legacy Duty Acts, notwithstanding that it may "be actually situate in this country at the time of the owner's "death."

Sir Melbourne quoted further from Lord Cranworth's judgment in the matter of the succession of Lord Henry Seymour, who died domiciled in France, bequeathing movable property in England:—

"The question therefore is whether, where a person "domiciled abroad, makes a will giving personal property in "this country by way of legacy, the legatee is a person becoming "entitled to that property within the true intent and meaning "of the second section. I think not. I think that in order "to be brought within that section, he must be a person who "becomes entitled by virtue of the laws of this country. Any "wider construction would give rise to difficulties hardly to be "surmounted."

The Manuel case, however, turned upon the construction of the Quebec Act which was held according to its wording, to apply only to transmissions in the Province of Quebec. The Court of Appeals unanimously confirmed the judgment, and upon the Quebec Government's appeal to the Privy Council, Lord Macnaghten disposed of the case in the following few words:—

"The reasons of the learned judges were delivered by Sir "Melbourne M. Tait, Acting Chief Justice, in the Superior "Court, and by Bossé, J., in the Court of King's Bench.

"Those reasons, stated shortly, are that according to their "true construction, the Quebec Succession Duty Acts only ap- "ply in the case of movables to transmissions of property result- "ing from the devolution of a succession in the Province of "Quebec, or, in other words, that the taxes imposed by those "Acts on movable property are imposed only on property which "the successor claims under or by virtue of Quebec law, and "that in the present case the several items in respect of which "succession taxes are claimed form part of a succession devolv- "ing under the law of Ontario.

"The decisions of the Quebec courts are, in their Lord- "ships' opinion, entirely in consonance with well-established "principles, which have been recognized in England in the "well known cases of Thomson *vs.* Advocate-General, and Wal- "lace *vs.* Attorney-General, and by this Board in the case of "Harding *vs.* Commissioners of Stamps for Queensland.

"Their Lordships will, therefore, humbly advise His Ma- "jesty that the appeal should be dismissed."

As I have already intimated, the judgment of Sir Melbourne Tait really turned upon the construction of the Quebec Succession Duty Act, and the case can, therefore, not be cited as a direct authority for the proposition that a Province has power to levy succession duty upon movable property situate without such province and forming part of a succession which devolves within that province. When we look at the only three cases cited by Lord Macnaghten as exemplifying well established principles, it might reasonably be assumed that such power does exist.

One is naturally beset with difficulty in predicating general principles from decisions which are influenced more or less by the views that their Lordships have taken of particular acts, or, as Lord Hobhouse described it in one case, as "verbal criticism of the acts." Nor is it reasonable to say that one decision is inconsistent with another without being able to determine just how potent a factor this verbal criticism was in the decision of each case. I cannot, however, refer to the recent case of Woodruff *vs.* The Attorney-General of Ontario, upon which present interest centres, without some reference to the three cases which Lord Macnaghten refers to as expressing well established principles.

The first of these was Thomson *vs.* Advocate-General, decided by the House of Lords in 1845 (12 Clarke & Finnelly, p. 1). John Grant, a British subject, died, domiciled in Demerara, where the law of Holland was in force, leaving movable property in Scotland. Suit was brought by the Advocate-General to recover succession duty upon this movable property in Scotland, and the Court of Exchequer gave judgment in favour of the Crown. The case was carried to the House of Lords, where Lord Lyndhurst, L.C., in discussing the supposed distinction between the case of the Attorney-General & Forbes and Arnold *vs.* Arnold, said:—

"I apprehend that that is an entire mistake, that personal "property in England follows the law of the domicile, and that "it is precisely the same as if the personal property had been "in India at the time of the testator's death. That is a rule "of law that has always been considered as applicable to this "subject..... Now, My Lords, if you apply that principle, "which has never been quarrelled with, which is a known prin-"ciple of our law, to the present case, it decides the whole "point in controversy. The property, personal property, being "in this country at the time of the death, you must take the "principle laid down in the case of *In Re* Ewin (1 Cr. & Jerv., "151), and it must be considered as property within the domi-"cile of the testator, which domicile was Demerara."

The Lord Chancellor was followed by Lord Brougham, who expressed his views as follows:—

"Here it is a case of money or property brought over "here and administered here, the domicile of the testator or "intestate being abroad out of the jurisdiction. There, in the "matter of Ewin, it was the converse, administration being by "a person domiciled here and a testator or intestate domiciled "here, and the funds locally situated abroad; it is perfectly "clear that no difference can be made in consequence of that "because the principle *mobilia sequuntcr personam* as regards "their distribution and their coming or not within the scope "of this Revenue Act, must be taken to apply to two cases pre-"cisely similar; and the rule of law indeed, is quite general "that in such cases the domicile governs the personal property, "not the real; but the personal property is in contemplation

"of the law, whatever may be the fact, supposed to be within "the domicile of the testator or intestate."

Lord Campbell expressed the same view as follows:—

"If a testator has died out of Great Britain with a domi- "cile abroad, although he may have personal property that is "in Great Britain at the time of his death, in contemplation "of law that property is supposed to be situate where he was "domiciled and, therefore, does not come within the Act; this "seems to be the most reasonable construction to be put upon "the Act of Parliament; it is the most convenient, and any "other construction would lead to very great difficulties."

The second of the cases was Wallace *vs.* The Attorney-General, decided in 1865 (L.R.I., ch. 1), where Lord Cransworth, L.C., gave the judgment from which Sir Melbourne Tait quoted at some length. The Lord Chancellor took the case just above referred to, of Thomson and the Advocate-General, as "finally settling the law upon the subject." This was the case which arose concerning the estate of Lord Henry Seymour, who died, domiciled in France, leaving movable property in England.

The last of the three cases which Lord Macnaghten refers to is that of Harding and the Commissioners, decided in 1898 (1898 A.C., p. 769). Silas Harding died, domiciled in Victoria, leaving movable property in Queensland. The case went to the Privy Council, where Lord Hobhouse, having quoted the Queensland Act, said:—

"The literal force of these expressions includes the estate "of Silas Harding. But then it includes a great deal more "which nobody can suppose that the Legislature intended to "tax. It includes all persons and all property all over the "world, and if not confined within reasonable limits would "enable the Queensland authorities to levy a tax in respect of "foreign property on foreigners within their power. Abnormal "consequences such as these have been avoided by judicial de- "cisions in England..... The matter appears to be well "summed up in Mr. Dicey's work on the Conflict of Laws, at "page 785, in which he paraphrases Lord Cranworth's applica- "tion of the principle '*mobilia sequuntur personam*' by saying "that the law of domicile prevails over that of situation.

"It is, of course, a maintainable opinion that the law of

"situation should prevail, and that a line which brings under "the general words of taxation property which is protected "by the taxing state, and which in case of dispute is admin- "istered by it, would form a more reasonable limitation of "such words than the limitation of such words by domicile. "The learned judges just below inclined to that principle; "and the Queensland Legislature has adopted it. But the "Court has only to decide what the Legislature meant when it "passed the Act of 1892, etc."

This case certainly seemed to sanction the principle that in contemplation of law movable property is deemed to be situate where the testator or intestate had his domicile at the time of his death, and thus to bring the property within the taxing jurisdiction of the state where the testator had his domicile.

But the Manuel case only held that the Quebec Act, as then worded, was limited in its application to successions devolving within the Province of Quebec. At the very next session the Quebec Legislature passed an amending Act (3 Edward VII, ch. 20, sec. 1), adding the following words to article 1191b of the Revised Statutes:—

"The word 'property' within the meaning of this Act "shall include all property, whether movable or immovable, "actually situate or owing within the province, whether the "deceased at the time of his death had his domicile within "or without the province, or whether the debt is payable within "or without the province, or whether the transmission takes "place within or without the province."

I take it to be elementary law that the Quebec Legislature cannot, by means of any definition which it can devise, enlarge the scope of the taxing powers which it possesses only by virtue of the British North America Act. To that Act alone we must have reference in order to determine what these powers are, and in section 92, sub-section 2, we find the power of direct taxation limited to taxation within the province. It is obvious that the Quebec Legislature cannot, by definition or any other form of enactment, bring taxation beyond the province within its powers. But it would be difficult to argue that the Quebec Provincial amendment, which I have just, quoted is *ultra vires* of the Quebec Leglislature. Lord Cranworth, in the Wallace case, said:—

"Parliament has, no doubt, the power of taxing the suc-
"cession of foreigners to their personal property in this country,
"but I can hardly think we ought to presume such an intention
"unless it is clearly stated."

and Sir Melbourne Tait, in the Manuel case, said:—

"The power of the Legislature to levy a tax upon movable
"property situate in this province, irrespective of where the
"testator is domiciled or where the succession devolves, cannot
"be doubted, and it would not have been difficult to find lan-
"guage to express its intention to exercise it."

We have, therefore, very high authority to the effect that movable property is deemed to be situate where the testator or intestate had his domicile, and we have also high authority for holding that the Provincial Legislature has power to tax whatever property it finds within its territorial jurisdiction The question naturally arises whether movable property, for the purpose of taxation, can be held to be situate in two different places at the same time. This brings us to the consideration of the case of Woodruff *vs.* The Attorney-General of Ontario, decided by their Lordships of the Privy Council in July last. The judgment of the Court of Appeals in Ontario is reported in 15 Ontario Law Reports, 1908, p. 416. The facts, arguments and views of the judges in the courts below are exposed in the decision of the Privy Council, as delivered by Lord Collins, and in order that the scope of this judgment may be fully understood, I shall not attempt to summarize it, but quote the report as given in the London *Times*:—

"Lord Collins, in delivering their Lordships' judgment,
"said, the question on these appeals was as to the right of the
"Attorney-General of the Province of Ontario to demand pay-
"ment of a tax called, in the Provincial Act (The Succession
"Duty Act, Rev. Stat. Ont., 1897, c. 24), which imposed
"it, 'succession duty' upon personal property locally situate
"outside the province and alleged by him to form part of the
"estate of a deceased domiciled inhabitant of the province,
"one Samuel de Veaux Woodruff. The question involved the
"the consideration of two separate transactions or sets of trans-
"actions whereby the deceased divested himself, or assumed to
"divest himself, of certain personal property locally situate in
"the State of New York. The first of those transactions took

" place in 1894, the second in 1902. The deceased died on
" November 28th, 1904, domiciled, as above stated, in the
" Province of Ontario. The present suit was brought by the
" Attorney-General in February, 1906, to have it declared that
" the property comprised in the transactions of 1894 and 1902
" (as well as certain other property described as 'the home-
" stead property') was improperly omitted from a certain affi-
" davit to lead probate filed by the first three defendants (ap-
" pellants) as executors of S. de V. Woodruff in the Surrogate
" Court, and claiming an account of the dutiable value of the
" property, and payment of the amount of the succession duty
" thereon. The action was tried before Chief Justice Falcon-
" bridge, of the King's Bench Division of the High Court, who,
" on January 5th, 1907, held that the homestead property, which
" had been settled on the testator's wife and his son, H. K.
" Woodruff, was improperly omitted from the affidavit, but that
" the property comprised in the transactions of 1894 and 1902
" was not improperly omitted from the affidavit, and as the
" value of the homestead property, added to the estate disclosed,
" did not bring the property up to the minimum value fixed
" by the Succession Duty Act for payment of duty in the case
" of property going to a wife and children, he dismissed the
" action. On appeal to the Court of Appeal for Ontario the
" decision of the trial judge as to the homestead property and
" the transaction in 1894 was affirmed, but was over-ruled in
" the transaction of 1902; and as to the amount comprised in
" the latter, the defendants were held liable to pay succession
" duty. No question had been raised before their Lordships
" as to the homestead property, but both parties had appealed
" as to the transactions of 1894 and 1902, the defendants seek-
" ing to set aside the decision against them as to the transaction
" of 1902, and the plaintiff by way of cross-appeal claiming
" duty in respect of the transaction of 1894. Though that
" latter claim arose by way of cross-appeal only, and the main
" appeal was by the defendants in respect of the transaction of
" 1902, it was, perhaps, more convenient to take them in chrono-
" logical order and begin with the transaction of 1894. In
" that year the Mercantile Safe Deposit Company in New York
" City held in their custody for S. de V. Woodruff, bonds and
" debentures issued by various municipalities in the United

"States and transferable by delivery, amounting in value to "about $213,000. He arranged with the United States Trust "Company of New York that they should take over the custody "of those securities to be held by them in trust to carry out "the terms of certain deeds to be executed by each of his "four sons. He then, in company with his son, H. K. Wood- "ruff, went to New York, taking with him four trust deeds "executed by his four sons respectively, and delivered those "deeds with four parcels of the securities, one parcel appro- "priated to each deed, to the Trust Company to hold under "the terms of the trusts so credited. Those trusts were for "the benefit of each of the sons respectively during his life "and for his children after him in equal shares. During the "life of S. de V. Woodruff the income derived from these secur- "ities was sent by the Trust Company half-yearly to the sons "respectively by cheques on a New York bank. Those cheques "were sent on by the sons to S. de V. Woodruff, who returned "to each of them $1,500 per annum. The evidence was that "there was no agreement, arrangement or bargain of any kind "between the father and the sons that he should receive this "income or any portion of it, and that this action on the part "of the sons was entirely voluntary. Chief Justice Falcon- "bridge held as to the transactions, both of 1894 and 1902, "that the Act did not 'extend to this particular property situ- "ated in the State of New York and governed by the laws of "New York,' and that, in the view he took of the case, the "intentions and motives of the testator and his sons were not "in issue. The subject-matter of the transfer of 1902 con- "sisted of similar bonds or debentures, also then in the custody "of the Mercantile Safe Deposit Company, New York, and "a cash balance in the hands of Messrs E. D. Shepard & Com- "pany, bankers. New York City, the proceeds of collection of "interest they had made for S. de V Woodruff, together with "certain coupons and bonds in their hands for collection, "amounting in all to a par value of about $443,257. By writ- "ten directions from S. de V. Woodruff to the Safe Deposit "Company and Messrs. Shepard respectively, the above secur- "ities were, in August, 1902, transferred in their books into "the names of his three sons, and in the case of his safe in "the custody of the Safe Deposit Company into the names of

"his three sons and his wife. The securities remained thus "locally situate in the State of New York until the death of "S. de V. Woodruff in 1904. As has been above stated, the "trial judge made no distinction between the 1894 and the "1902 transactions. He treated them both as falling outside "the scope of the Provincial Act. The majority of the Court "of Appeal, however, held that the second of the two trans- "actions fell within the Act, while they affirmed the view of "the trial judge as to the first. Mr. Justice Meredith held "that both alike were covered by the Act. They both were "concerned with movable property locally situate outside the "province, and the delivery under which the transferees took "title was equally in both cases made in the State of New "York. While, therefore, their Lordships agreed with the "decision of the majority of the Court of Appeal, confirming, "as it did, that of the trial judge as to the earlier transaction, "they were unable to follow their view of the latter one. The "pith of the matter seemed to be that the powers of the Prov- "incial Legislature being strictly limited to 'direct taxation "within the province' (British North American Act, 30 and "31 Victoria, c. 3, sec. 92, sub-sec. 2), any attempt to levy "a tax on property locally situate outside the province was "beyond their competence. That consideration rendered it "unnecessary to discuss the effect of the various sub-sections "of section 4 of the Succession Duty Act, on which so much "stress was laid in argument. Directly or indirectly the con- "tention of the Attorney-General involved the very thing which "the Legislature had forbidden to the province—taxation of "property not within the province. The reasoning of the Board "in Blackwood *vs.* The Queen (8 App. Cas., 82), seemed to "cover this case. Their Lordships would, therefore, humbly "advise His Majesty that the appeal of the defendants should "be allowed and the cross-appeal of the plaintiff dismissed, that "the judgment of the Court of Appeal should be set aside with "costs, and the judgment of Chief Justice Falconbridge re- "stored. The cross-appellant would pay the costs of the "appeals."

Their Lordships, in arriving at these conclusions, appear to be influenced by two principal considerations, (1) that the property was locally situate outside the province, and that,

therefore, the imposition of the succession duty was not direct taxation within the province, and (2) that the delivery under which the transferees took title was equally in both cases made in the State of New York. The only case referred to by their Lordships is that of Blackwood *vs.* The Queen, a case from Australia, which was decided in 1882, or sixteen years before the Harding case above referred to. In that case the testator died, domiciled in Victoria, and suit was brought to compel payment of duty upon movable property situate beyond the colony of Victoria. I quote a few words from the judgment of the Chief Justice of the Supreme Court of Victoria:—

"It is a clear proposition, not only of the law of England, "but of every country in the world where the law has the "semblance of science, that personal property has no locality. "The meaning of that is not that personal property has no "visible locality, but that it is subject to the law which governs "the person of the owner, both with respect to the disposition "of it and with respect to the transmission of it, either by "succession or by the act of the party. It follows the law "of the person. An owner in any country may dispose of his "personal property. If he dies it is not the law of the country "in which the property is, but the law of the country of which "he was a subject that will regulate the succession. The legal "effect of these words has been formulated in the well-known "maxim *mobilia sequuntur personam.* So the portion of per-"sonal estate of a deceased person that falls within the "term '*mobilia*' is governed by the law of the country in which "he was domiciled, not by the law of the country where the "property may have been at the time of his death. Personal "property has no locality; it follows the owner wherever he "may be domiciled."

This opinion of the learned Chief Justice of Victoria is in full harmony with the views of Lord Lyndhurst, Lord Brougham, Lord Campbell, and even of Lord Hobhouse in the Harding case. The judgment of the Supreme Court of Victoria was reversed, Lord Hobhouse delivering the decision of the Privy Council. It was reversed not because their Lordships of the Privy Council differed from the general principles laid down by the learned Chief Justice of the Supreme Court of Victoria, but because of the view which they entertained of

the literal effect of the taxing act they were construing. Lord Hobhouse said:—

"It appears to their Lordships that the court below has "first searched for a rule of law and has then bent the Statute "in accordance with it; whereas until the true scope and inten- "tion of the statute has been discovered it cannot be seen what "rules of law are applicable to it." After a "verbal criticism of the Statute," Lord Hobhouse concludes:—"What their Lord- "ships find is that the Victorian Legislature have imposed a "tax payable by an executor, as a condition precedent to the "issue and efficacy of the probate necessary for his action, out "of the estate while it is in bulk, and before distribution or "administration has commenced. All these things, the person "to pay, the occasion of payment, the fund for payment and "the time of payment, point to the Victorian assets as the "sole subject of the tax. The reason which led English courts "to confine probate duty to the property directly affected by "the probate, notwithstanding the sweeping general words of "the Statutes which imposed it, apply in full force to this "case..... Their Lordships think that in imposing a duty "of this nature, the Victorian Legislature also was contem- "plating the property which was under its own hand and did "not intend to levy a tax in respect of property beyond its "jurisdiction, etc."

The gist of the decision was in effect that the language used in that particular Act requiring payment of the duty by the executor, etc., was intended only to cover property within Victoria. The executor by probate in Victoria would not acquire, it seems, control over the property outside of that colony without obtaining ancillary probate, and that the intention was only to tax property of which he acquired the control by the probate. The case does not appear to be any authority for the proposition that the Legislature of Victoria had not inherent power to tax all the movable property, wherever situate, of a succession which devolved in Victoria.

I express no opinion as to whether it can be gathered from the language used by Lord Collins that their Lordships intended entirely to reject the maxim *mobilia sequuntur personam* as inappropriate to the decision of questions relating to succession duty, but the perusal of the citations I have taken the liberty

of making, will indicate clearly enough how very unsatisfactory and even anomalous a position we find ourselves in with respect to the whole question of succession duties. I suppose I may take it as a postulate that the same property of a succession ought not to pay succession duty twice or to two different taxing powers, and also that movable property ought not to have more than one *situs* in contemplation of law for purposes of taxation. It ought to be possible to remove this anomaly by an agreement between the several provinces, and, if necessary, also between the provinces and the Imperial Government. It is only a very short time since the estate of a lady domiciled in England paid succession duty to the Province of Quebec of upwards of $80,000, most of the property here being movable property. At the last conference of the Provincial Premiers I understand the matter was to some extent discussed, but no agreement was arrived at.

The disposition to do what is right and just no doubt prevails, and it ought not to be difficult to arrive at a rational and an equitable solution of the difficulty. I hear that one province settled a succession duty question with the Imperial Authorities upon the basis of a division of the amount according to the value of the estate there and here. But a general understanding between the provinces themselves and with the Home Government is essential, to prevent the irritation of double taxation.

In concluding, I hope it will not be deemed an impertinence upon my part if I suggest that one provision of the Ontario Succession Duty Act may be worth a further consideration by the authorities and by the profession, namely, that which, in the case of a person dying, domiciled outside the Province of Ontario, and leaving property in Ontario, fixes the rate of taxation upon that property in Ontario according to the valuation of the whole succession, *i.e.*, that if A die, domiciled in Montreal, leaving, say, $20,000 of property in Ontario, the rate of taxation upon that property in Ontario is made to depend upon how much there is in the succession elsewhere than in Ontario. Again, in cases where the amounts left in Ontario are so small as to be exempt from duty, the province looks upon the estates outside its limits to complete the amounts that will warrant taxation.

Montreal, P.Q., October, 1908.

OUR UNWORTHY STATUS.

IT SEEMS strange that a virile people, with a growing population now exceeding that of England and Scotland at the time of their union, should not claim a co-ordinate in lieu of a subordinate position. It is strange that, having come of age, it should be content to remain in tutelage, with no vote upon the imperial establishments or foreign policies. It is strange that it should still waive the rights and shirk the responsibilities of nationhood, whether as an independent state or a full partner in the British Empire, or in some other sovereign nation.

For this strange phenomenon there are several reasons. I will not believe that the chief of these can be stinginess—that Canada is content to remain an unrepresented dependency of the Empire mainly to escape contributing to the Imperial establishments. A more potent reason for the Canadian apathy on this momentous question is, perhaps, the action of politicians of both parties whose multitudinous organs ridicule and strive to silence all pleadings for a status that would be both more dignified and (as will presently be explained) more secure. Even those politicians who may recognize the unworthiness of our position or the dangers of drift are afraid to move for fear of alienating our French fellow-citizens—who would probably vote more numerously than British Canadians for a co-ordinate status in the Empire if they could be made to feel that the only practicable alternative was a union with the American Republic. Another numerous class, who are not all politicians, add their soporifics to lull Canadians into inaction upon what Joseph Howe called "the question of questions." These are the people whose aspiration is for ultimate independence, who think independence more desirable than full partnership in the grandest of empires, but recognize that it would be too expensive and precarious at present. Many of these are naturally French Canadians, to whom the strengthening and exalting of the Empire is not a powerful sentiment, and who would prefer belonging to a great nation, half French and half

British, rather than be merged in a greater nation where Britons would more distinctly dominate. Time is on the side of these separatists; for the interests of Imperial consolidation they have had too much time already.

As I wrote in the Toronto *Week*, of October 23rd, 1884, our present condition is analogous to that of the hermit-crab, which has adopted the cheap expedient of sheltering itself under vacant shells and has suffered in consequence a striking anatomical degeneracy, which Professor Drummond has described in detail in his "Natural Law in the Spiritual World." Having secured its shelter and, apparently, its safety, "one of the chief inducements to a life of high and vigilant effort was at the time withdrawn. A number of functions, in fact, struck work..... Although certainly the additional development of the extremity of the tail into an organ for holding on to its extemporized retreat may be regarded as a slight compensation, it is clear from the whole structure of the animal that it has allowed itself to undergo severe degeneration."

"We hold a vaster Empire than has been," was the proud legend on our Jubilee stamps, though when that boast was printed we did nothing to "hold" the Empire, unless holding on to it is the same as holding it.

The analogy of the hermit-crab was used by Professor Drummond to explain the decay of the spiritual faculties due to sheltering oneself inertly in dogmas without practicing virtues or combating doubts. But we may use it to foreshadow the decline of healthy political activity and the consequent impairment of mental virility, in a country that elects to remain in leading strings. And are not the beginnings of such a decline visible to-day. How petty are our interests, how small most of our public questions, how narrow our sympathies? How much more do Canadians generally speculate upon the prospects of a local election than on the prospects of a great war in which the Empire may be involved, but in the cost of which they have no immediate interest? Can we in this country be expected to feel the same pride as Scotsmen or loyal Irishmen in the exploits of an army or navy which they help to pay for, but we do not! An Englishman feels a sense of ownership, as well as of security, when he sees a British ironclad at anchor in a foreign port; but a Canadian can experi-

ence the latter feeling only. A Vermonter can "enthuse" over a diplomatic success achieved by a Marylander, or fume over some foreign outrage to a Californian, with an excitement that no public event outside Provincial or Dominion politics can arouse in the semi-enfranchised Canadian who has nothing to do, directly or indirectly, with the cost or conduct of the Imperial army, navy, legislature, or diplomatic service.

A few colonial public men, like Joseph Howe, have risen above their environment, and shown an admirable insight into national and international problems. But our long exemption from Imperial and diplomatic cares and responsibilities has tended to wither the faculties that are exercised in "la haute politique." Illustrations of the atrophy of statesmanship may be found in the crude suggestions made by some colonial thinkers who creditably desire to attain a more dignified status.

Judge Haliburton noticed the cramping influence of belonging to an unrepresented dependency. He compared the Colonies to ponds, which rear frogs, but want only outlets and inlets to become lakes and produce fine fish. And one of his early critics (Professor Felton, in the *North American Review,* January, 1844) attributed Haliburton's own defects to "the belittling effects of the colonial system." It is true that since Confederation our interests and ideas have expanded, but they will expand still more when we attain full nationhood.

In recent years we have done something towards our defence, and the present Government has given a preference to British goods, in partial return for benefits received. But our position still to some extent resembles that of the hermit-crab. We take shelter under the shell of Britain and pay inadequately for the shelter. Our reciprocation of benefits is incomplete. We give nothing to the navy. The forces we pay for are for home defence; the troops that Ireland pays for may be ordered to any spot in the Empire where they are needed. We should contribute more efficiently if one or two battalions of our regulars were sent to serve in other parts of the Empire. We should also give our soldiers an opportunity of seeing the world and, perhaps, distinguishing themselves in a campaign. The service would have more attraction for adventurous young men, and the difficulty of recruiting would disappear. A sense of Imperial brotherhood would be fostered, and the letters and

newspapers passing between the soldiers and their friends at home would broaden the minds of both. In her published reminiscenses of the governorship of her brother-in-law, Lord Monck, Mrs. Monck observed that the then motto of the Canadian artillery was "Ubique" (everywhere), though they went nowhere, as somebody satirically remarked.

The prestige we add to the Empire by remaining part of it is offset by the responsibilities we impose upon it. While we continue under her protection Britain is always bound to aid us in our disputes with foreign nations, while we hold ourselves bound to aid her only when we please and as we please. We plume ourselves on our participation in a single war, and the intervention of the Great Colonies in that war was undoubtedly of the greatest moral importance. It probably averted a combination of powers against Britain. But even in that war, undertaken for a colony, the contributions of the colonies in men and money were small, compared to the contributions of the Three Kingdoms. Again we point with pride to our public works and argue that, strengthening Canada, they strengthen the Empire and more or less exempt us from direct contributions. We emphasize the strategic importance of the Canadian Pacific Railway, which furnishes a quicker route than the Suez Canal for British troops bound to China or the Eastern side of India. But though a war with the United States is as unlikely as it would be deplorable, it is possible while Canada remains in the Empire and marches with the great republic for three thousand miles. On our borders and our seas disputes have often arisen, and others might possibly arise that might culminate in hostilities. In such a war the Canadian Pacific might be a source of weakness, for, as Sir John Colomb has pointed out, a railway helps the belligerent that holds it. And, gallantly as our forces would fight and loyally as they might be supported by Britain, the presumption is that the enemy would control the longest and most important stretches of the line.

But it may be silly to appeal to the conscience of the Canadian people. Perhaps justice and self-respect are obsolete. Perhaps Christian morality is not applicable to the dealings of nations, but only to individuals, and to individuals only in their non-political relations. As Professor McLean, of Toronto, declares in *The Quarterly Review*, for July, "Canada has con-

stantly taken the position that in developing her own resources she is in a real sense contributing to the uplifting of the Empire..... Stirring appeals to Imperial sentiment, as defined by those making them, and attempts to befog the issue by telling Canada that she should be ashamed of not making direct contributions to the army and navy, are wide of the mark." I am fain to believe otherwise, for a nation with no sense of shame would be a danger and disgrace to mankind. Contribution, however, is a corrollary to representation.

In the same interesting article Professor McLean, touching on the exclusion of Asiatics, opines that "the days have gone by when the right of entry of foreign peoples into a country can be decided on high humanitarian grounds. It is a question of national self-interest." Perhaps the Professor is right. Perhaps it is too late to apply Christian charity to politics. Altruism in the treatment of foreigners may suit primitive communities like Arcadians or early Christians. It may be good for trade to teach this virtue to Asiatics; but perhaps it is a negligible quantity in hustling modern states, ruled by bossy labour unions and practical politicians. There self-interest may reign supreme over the obsolescent virtues. Is this the revised gospel our missionaries are to preach to the benighted heathen? Is this our Christianity up to date? Are these our glad tidings of joy? Has "The Twilight of the Gods" come upon Christian nations fondly hoping for the Millennium? Or is it only a passing eclipse that obscures their moral vision?

It is not self-respect, or gratitude, or any moral sentiment alone that makes it desirable for Canada to rise to a co-ordinate status. Our security would be vastly increased if we either joined the United States or bound ourselves more closely to the Empire. The *status quo* is fraught with dangers. The increased sense of Imperial responsibility that would follow the closer union of the Empire would deter the Great Colonies from their inhospitable treatment of our Asiatic allies and fellow-subjects. The mobbing of Hindus and the harsh legislation against them in the Colonies, worse in Natal and Australia than in Canada, is one of the causes of their present seditious unrest, as everybody who reads Indian papers knows. Nandhi, a leader of the Hindus in South Africa, declared, many

Indian journals have repeated, and some Britons feel, that England may soon have to choose between retaining India or some unbrotherly colonies that discriminate against it. And what would become of Australia or South Africa if the Empire cast them out? In a confederation of the Empire each partner, being obliged to contribute men and money for the suppression of any rebellion in India, would be more chary of yielding to the unchristian clamour of exclusive labour unions. There would also be less likelihood of our losing strengthening alliances through the ill-treatment of our allies in sections of the Empire, for in foreign wars, as in internal rebellions, every section would have to bear its share. Reinforced by union, the Empire could choose its own allies. Some of the irritant causes of wars would be removed, and no nation or combination of nations would be likely to try conclusions with the Britannic federation. The security of the whole is the security of all its parts. Moreover, if Canada became a represented and paying partner and ceased to be a dependency, she would command a fuller and prompter support from the Empire in her just disputes with foreign nations.

At present friction between Britain and the oversea Dominions frequently recurs, from their treatment of friendly foreigners, or from her alleged neglect of colonial interests, or for other causes. As things are, we have no redress, save to murmur and protest. Some day our protests and murmurs might create a tension, and the worst misfortune to be apprehended for our race and nation might ensue. The Dominion and Empire might part in anger, and Canada might swell the number of Americans unfriendly to Great Britain. "The grand vision of allied speakers of English dominating the world and dictating peace to the too heavily armed nations will have melted from dimness to invisibility," as the writer observed in an article printed on the Queen's Jubilee day in 1887.

Wise men build shelters before the storm arrives. And yet some of them extol what others have called "the ignoble policy of drift." Ignoring the dangers and disadvantages of our present status, they argue that our rights and liberties must be won by slow degrees, and that the British constitution is the product of evolution and not of revolution. But from Magna Charta onwards the champions of British freedom have

used revolutionary tactics, and used them successfully, when the occasion demanded. It is doubtful, moreover, how far historical precedents are applicable to the unprecedented problem of how best to consolidate the greatest and most scattered Empire known to history. On the other side, men of equal ability hold that it is already too late to effect a closer union, that an Imperial partnership, if now offered to Canada, would be politely declined. As the recent reduction on the postage of letters and papers throughout the Empire, if effected long years ago, might have made us more British and less American, but cannot now undo the Americanization of our opinions and tastes; so, they argue, a present invitation to partnership would be combated, perhaps, successfully, by those whose patriotism is now monopolized by our great Dominion; and these will grow more and more numerous unless our people are speedily led to realize the grandeur of our Imperial heritage. Yet some are opposed to an early decision, because it might prove unfavourable. A hasty decision, before our people had fully deliberated upon their fateful choice, would indeed be unwise. But were we to be invited to assume the rights and responsibilities of full partnership, and given two or three years to make up our minds, the chances of our accepting such an invitation would be more promising were it issued now than were it to be deferred for ten or twenty years. And if there is any Great Colony that would deliberately decline to bear its full and fair share of the Imperial burdens, it is desirable that the other members of the Empire should find that out and govern themselves accordingly. "At all events," wrote Howe, at a time when our more open markets were our only return for our protection, "if there are any communities of British origin anywhere who desire to enjoy all the privileges and immunities of the Queen's subjects without paying for and defending them, let us ascertain where and who they are—let us measure the proportions of political repudiation now, in a season of tranquility—when we have leïsure to gauge the extent of the evil and to apply correctives, rather than wait till war finds us unprepared and leaning upon presumptions in which there is no reality."

Those who think it desirable that Canada should emerge from her dependent condition have not yet agreed on a plan for attaining that desideratum. The talented Judge Longley

thinks, or thought—for an evolutionary process is noticeable in his printed opinions on our future destiny—that "Canada has no idea of joining in any project of Imperial Federation." It is true that Canada, for reasons before given, has been apathetic on the subject of its future, and apparently content to drift. But Imperial Federation is not dead. Though the Imperial Federation League was killed by another eminent Canadian, or rather bluffed into committing suicide in a fit of temporary insanity, and though the branches naturally died with the trunk, the spirit of Imperial Federation lives. And with the idea of uniting the realms of the Empire into a partnership, with home rule for each and equitable representation in an Imperial legislature, may prove less visionary than the idea of wholly independent nations under one crown. Separate in their military and naval and consular and diplomatic services, separate in their interests and ideals and customs and policies, yet under the same sovereign! Is this anomaly practicable? "Would it be a desirable result," asks Lord Milner in the *Standard of Empire,* "that the United Kingdom and Canada (and what is here said of Canada is equally applicable to the other self-governing states) should, while remaining subject to one king, become in all other respects virtually separate countries pursuing independent and, perhaps, jarring policies, represented by different ambassadors, working independently of one another, and possibly against one another; countries which, in any international complication, might or might not find themselves on opposite sides, which, in the extreme case of war, might or might not stand together?" Judge Longley is, however, to be commended for his manly discontent with our present status and for his efforts to find "a bond of permanent union."

Mr. Chamberlain challenges admiration as the first Imperial statesman who both saw that the consolidation of the Empire was paramount to any other political issue and dedicated his great abilities to that supreme object. Everybody feels the pathos of his shattered health. But, unfortunately, he has chosen, or been put upon, a road that may never lead to the goal of his desires. Preferential trade within the Empire would be a unifying policy if it were practicable. Even if a mandate be secured from the British constituencies to negotiate

preferences with the Great Colonies, many who know the political power of colonial manufacturers' associations fear that such negotiations would prove futile. Our manufacturers would resist with probable success all reductions of the tariff that would permit British manufacturers to share the Canadian market to any appreciable extent. Some of these manufacturers are quite willing to contribute to the burdens of Empire in any way that does not interfere with their privilege of exploiting their countrymen. No *quid pro quo* that the British commissioners might deem sufficient compensation for an increase of the British duties on foreign grain, might be procurable; and no agreement being practicable, the bargainings might end in mutual murmurs and recriminations. But at all events, whether his object be attainable or not, Mr. Chamberlain has brought to the fore the vast importance of consolidating the Empire.

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THE COST OF LOCAL INDEPENDENT BANKS.

JUDGING from appearances there is about to be, in the United States, something of a battle between the advocates of branch banking and the friends of the present system of isolated local banks. The sub-committee of the Currency Commission appointed by the last Congress has completed its European visit, wherein an investigation was made of the several banking systems prevailing on the other side of the Atlantic. On the return to America of the members of the sub-committee, it was announced that two well known American banking experts had been designated to continue the examination of the financial systems of France and Germany.

Though the visit to Canada has not yet been made, and though there is every reason to expect that their coming study of our system will do even more than their study of the European systems did to sway the committeemen in favour of branch banks, the impression has got abroad that branch banks will be strongly recommended. As the *New York Financier* says, the impression is based upon the fact that in Europe the "inquiry was concentrated upon the central and branch bank plan."

Anticipating that such a recommendation will be made, the bankers are apparently laying their plans to defeat it. They are resolved, at all hazards, to prevent the introduction of the branch system, as to their minds it threatens, to quote the *Financier,* "to involve the abolition of fourteen thousand boards of directors, and compel the retirement, for engagement in other occupations, of probably an average of ten officials and clerks in each bank, many of whom have spent the greater part of their business life in banking, and presumably, are unfitted for other business."

This fear as to the abolition of the fourteen thousand boards of directors, is well-grounded. Branch banks would certainly do away with most of them. But the other fear—that many bank clerks would lose their places and be forced into other employments appears to be altogether unreasonable. On the contrary, it seems likely that the introduction of branch

banks would lead, right away, to a considerable increase in the demand for men by the banks, and instead of them dismissing men they would be obliged to take on many more. An almost inevitable result of the change, if the opening of branches were left free and unrestricted, would be that banking offices were established in thousands of places not now possessing them. This would be so because a branch could be operated much more economically than one of the local independent offices, with its president, vice-president and full board, which in turn means that a profit would be found in operating branches in the smallest places.

And, on top of the fact that a great many more men would be needed, bank clerks in the United States would find that with branch banks their prospects of advancement were very much improved. Instead of being blocked for ten or twenty years, or for life at the teller's cage, as is the case to-day in hundreds of offices, each man would have the chance of rising quickly to a branch managership in some one or other of the important cities.

Possibly few people in the United States, even among the bankers themselves, have any adequate conception as to the enormous actual cost of their system of local independent banks. In his address, delivered a few months ago before the Economic Club of New York, in which he styled the United States banking system "the worst in the world," Andrew Carnegie quoted Mr. Fowler, the chairman of the Finance Committee of the House of Representatives, as stating that the loss to the country through the diversion of banking capital into Government bonds amounted to $150,000,000 annually. Pretty much every banker knows that one of the chief reasons why this costly diversion of capital is necessary is because there are so many banks, of all degrees of size, and of soundness and strength, operating in the United States.

Suppose for a moment that the national banks were allowed, as are banks in some other countries, to issue notes to circulate as money based on no other security than the general assets of the respective institutions issuing them. Except in the cases of some few institutions in the larger cities the individual banks are not much known outside the immediate vicinity of their single offices. Amongst so many, the majority being

small, there must all the time be some on the verge of failure. It would be quite a hopeless task, even for experts, to tell which might safely be trusted, and which might not. So, every little while, when an issuing bank broke down, its notes in circulation would lose their negotiability. As they would be widely scattered, people in many States would find themselves subjected to annoyance and loss through this cause. Bank note holders are always spoken of as belonging to the class of involuntary creditors. That is to say, they became creditors of the banks whose notes they hold without being able to exercise their choice or preference. A man in business could not well discriminate amongst the bank notes tendered him by his purchasers or debtors. So long as the notes were the obligations of going banks, and were lawful money, he would have to take them all. The bank depositor has a distinctly different position. He may choose and select the bank to which he will entrust his money. Because of this difference in position, it is nearly everywhere regarded as proper that note holders should have the preference over depositors. In Europe the preferential treatment usually takes the form of limiting and restricting the bank note issues. In Canada the bank notes have been for many years an absolute first lien on the assets of the issuing banks; and a few years ago they were further protected by the Government's requiring the associated banks to enter into a mutual guarantee of the notes of each individual bank. In the United States the policy was followed by requiring each issuing national bank to cover its notes by an equal amount of Government bonds. None but the national banks have the right to issue notes. Thus, the national bank notes were made absolutely safe. But that safety was acquired at a considerable cost, for, as the national banks must buy Government bonds in amount at least equal to their outstanding note circulation, their note issues do not permit them to increase their loans to the public by a single dollar; while in Canada each bank's power to discount for its customers is increased practically by the amount of its note circulation, less the cash reserve, which experiences teaches it must be held against the notes—not more than 25 per cent. This means a good deal to the borrowing customers of the Canadian banks, and, consequently, to the Dominion's trade.

This cost resulting from the diversion of banking capital into Government bonds is only one of several important items which, taken together, place upon the energy and resources of the United States a much greater annual handicap than the $150,000,000 spoken of by Mr. Carnegie.

At the outset it is to be admitted that there are certain dangers and evils which might be associated with the introduction of branch banks into the United States. One consideration in particular is bound to occur to every thinking person whenever the subject is discussed. It is that the isolated small banks may go down in fairly considerable numbers without causing a very widespread distress; but if a big institution, that had branched into hundreds of places, were to fail disastrously, the ruin and havoc would be tremendous indeed.

Then there is the reasonable fear that some powerful interests in the central cities who have a reputation for using the resources they control somewhat unscrupulously for their private benefit, would find in branch banks an added means of exploiting the general resources in stock speculations or in some other manner calculated to advantage themselves.

It can be pointed out, for the benefit of those who thus think, that there are means of interposing checks and safeguards against such dangers as those mentioned as well as others that might be feared.

In estimating the cost of the present system, one of the first things to be considered is the loss inflicted upon the people, their creditors, through failures and stoppage. The reports of the Comptroller of the Currency show that depositors and creditors of the national banks have fared better, in the aggregate, than the depositors and creditors of State banks and trust companies. The following table shows the aggregate liabilities and net loss to creditors of insolvent national banks, the affairs of which have been finally closed. It should be borne in mind that there were some sixty-eight banks, the affairs of which had not been finally closed up to 31st October, 1907, not included in the table. The Report for 1907 states that up to that date 453 insolvent national banks were administered by receivers, and in the cases of 387 of them the affairs had been settled and the receivers discharged. Only the 387 are included in the table.)

NATIONAL BANKS.

Year.	Number of Banks Closed.	Aggregate Liabilities	Net Loss to Creditors.
1891..	22	$ 7,532,332	$4,084,559
1892..	17	12,769,312	1,946,879
1893..	51	18,418,031	4,475,528
1894..	18	4,572,795	1,789,371
1895..	32	7,974,511	1,954,048
1896..	24	9,586,927	3,502,158
1897..	35	25,535,553	1,244,145
1898..	6	962,262	42,796
1899..	11	1,764,556	361,181
1900..	4	9,790,591	* 145,247
1901..	5	935,759	117,569
1902..	2	378,880	1,113
1903..	7	4,678,751	34,458
1904..	11	2,665,910	210,084
1905..	3	1,309,832	4,767
1906..	2	50,747	* 1,267
	250	$108,926,749	$19,622,142
Annual average..	15	6,807,922	1,226,384

* In 1900 and 1906 the amounts received by creditors were greater than the face amount of their claims because of the interest they received.

To get a fair presentment of the average showing it has been necessary to take the record for sixteen years back. Bank failures are most plentiful in times of trouble and depression, and less so in times of prosperity. The period taken covers the 1893 panic, the years of depression that followed it, and the succeeding era of good times that lasted till 1907.

It is to be observed that the figures given in the column headed "net loss to creditors" do not cover the whole loss to the people through these bank failures. Whenever a bank stops, practically the whole amount of its liabilities to the public becomes at once a lock-up. Nearly everybody who has money in it is put to inconvenience because of inability to get or to use the funds they have provided for investment or expenses. The time of the lock-up varies according to the condition of the bank. The Comptroller says, "the average life of an active receivership is approximately four years."

In the sixteen years the average for each year is fifteen national banks shut, $6,807,922 locked up for a time, and $1,226,384 lost, not counting interest. The figures for each

would be somewhat increased if the results of the sixty-eight banks, the affairs of which had not been settled, were included.

The national banks, however, show up in favourable contrast with the state and private banks. Taking the latter for the same period the following table results. (See page 42 of the Comptroller's 1907 Report) :—

STATE AND PRIVATE BANKS.

Year.	Number of Failures.	Aggregate Liabilities.	* Losses to Creditors.
1891..	44	$ 6,365,198	$ 3,274,601
1892..	27	3,227,608	2,423,748
1893..	261	46,766,818	28,854,548
1894..	71	7,218,319	5,761,797
1895..	115	9,010,584	6,758,876
1896..	78	7,513,837	6,979,474
1897..	122	24,090,879	
1898..	53	7,080,190	
1899..	26	10,448,159	
1900..	32	11,421,028	
1901..	56	13,334,629	
1902..	43	10,332,666	70,881,256
1903..	26	4,005,643	
1904..	102	31,774,895	
1905..	57	10,273,023	
1906..	37	7,187,858	
	1150	$210,051,334	$124,934,300
Annual average ..	72	13,128,208	7,808,394

* Ascertained through deducting dividends to creditors from aggregate liabilities.

The Comptroller's Report omits the amounts of dividends to creditors after 1896. The total of liabilities, 1864 to 1896, inclusive, is $220,629,988; the total of dividends to creditors for the same period, $100,088,726—the loss, therefore, being $120,541,262, or about 54½ per cent. of the liabilities. It has been assumed that the same proportion of the aggregate liabilities would be lost during the years 1897 to 1906. Judging by the amounts of nominal assets as compared with aggregate liabilities, this estimate is fair and reasonable.

Combining the results arrived at respectively in the cases of the national banks and of the state and private banks (the latter including trust companies) it is seen that under the present system the people have to expect, estimating on the basis

BANK FAILURES IN CANADA.

Year.	Name of Bank.	Per cent. Paid to Depositors.	Loss to Depositors
1893	Commercial Bank (Manitoba)	80	$ 154,290
1895	Banque du Peuple	75.25	1,236,511
1899	Banque Ville Marie	17	1,248,818
1905	Bank of Yarmouth	100	nil.
1906	Ontario Bank	100	nil.

If it were not for the bad showing made by the two French-Canadian banks, failing respectively in 1895 and 1899, the record would show an almost total clearness from losses. As it was, the average year lock-up of depositors' funds amounted to $451,381, their average yearly loss to $164,976. The strong point about the showing is that in the eight years since 1899 no losses whatever occurred.

The failure of the Bank of Yarmouth in 1905, did, to be sure, result in locking up a little over half a million dollars of deposits for a time, but that cannot be charged against the system of branch banks, since the Bank of Yarmouth was one of the very few local single-office banks existing in the Dominion

Neither can the two small failures occurring in the first half of 1908. Both the Banque de St. Jean and the Banque de St. Hyacinthe were local banks of the United States type, though each had some three or four branches. In the case of the Ontario Bank, 1906, it is well known that no lock-up occurred. All creditors were able to collect their claims at their pleasure in cash from the Bank of Montreal, which guaranteed the liabilities.

Judging by this Canadian record (with the last nine years almost absolutely clear, so far as the representation of typical branch banks are concerned) nearly the whole of the losses shown in the United States can be placed against the system of local independent banks.

Another respect in which the latter are exceedingly costly is in connection with their bond investments. Reference was made, at the beginning, to the fact that the provision of security for national bank note circulation caused a diversion of bank resources into government bonds. The matter goes a great deal deeper than the note circulation. The banks have to provide bonds also as security for Federal Government deposits

of the past record, that each year there will be an average of 87 banks failing, and an average of $19,936,130 of depositors' money locked up for an indefinite time, of which amount $9,034,778 will be ultimately lost. Failures among the savings banks are not included in these totals.

Besides the losses to the creditor class through these bank failures, there are also to be reckoned the losses inflicted upon the debtor class. Whenever a bank fails and is liquidated, all its borrowing customers must pay to the receiver the debts they owe it. Some are able to induce other banks to take up their loans. But that course is difficult at certain times; and a goodly number are not able to so finance their liability to the failed institutions, and have themselves to be sold out or liquidated, sometimes when they are quite solvent and worthy of credit. The inconvenience and loss thus suffered by the borrowing class, of which no estimate or calculation can be made, is to be added to the score.

We are now arrived at the questions: How much this annual loss can fairly be charged against the system of local independent banks? What would the loss have been had the United States possessed properly constituted and operated branch banks such as exist in other important countries?

Some idea as to the answers can be arrived at by taking account of banking results in other countries.

In the British Isles, where the branch system prevails, bank failures are rare. It is many years since a really important bank went down. The Barings, who stopped in 1890, were an accepting house for international bills and a finance house rather than a branch bank. So unusual are failures that depositors must have come to regard the risk of loss or inconvenience from that source as entirely negligible. It is not so in the United States. A large number of depositors there cannot tell, with any degree of assurance, whether or not *their* bankers will be numbered among the eighty-seven that are slated to fall in each average year.

Canada's experience is, perhaps, more in point. The following table comprises all the bank failures in the Dominion between 1890 and 1906:—

for state government deposits, and, in some States, for the deposits of municipalities. The system of banking induces a further and entirely voluntary investment in bonds and stocks in the following manner. A single-office bank established in a place where deposits exceed loans, and there are many such places in the States, invests a considerable part of its surplus in bonds, whereas, under the branch system such surpluses would be utilized in advances to commercial borrowers at other points, where the natural demand for loans exceeded the supply of deposits.

The tendency seems to be in the direction of requiring and encouraging the banks to buy ever more and more bonds, for one purpose and another, until there is little left for what should constitute the backbone of their resources—commercial paper. How large is the proportion of investments in, and loans on, bonds and stocks, is shown by the following table, compiled from the Comptroller's Report, of the resources of the national, state, private and savings banks and trust companies, as at 22nd August, 1907, for the national banks, and thereabouts for the others:—

U. S. bonds for circulation	$ 557,277,950
U. S. and other bonds for Government deposits	163,826,689
U. S. bonds and premiums	44,628,446
Other bonds, securities, etc.	3,609,175,296
Demand loans on stocks and bonds	832,878,479
Time loans on stocks, bonds, etc., or on real estate mortgages	869,237,859
Loans on collateral security (presumably bonds and stocks)	1,211,259,042
	$7,288,283,762
Loans on real estate	1,771,402,954
Grand total applied to bonds, stocks and real estate.	$9,059,686,715
Grand total commercial paper	6,060,468,537
Grand total resources	19,558,842,918
Commercial paper per cent. of total resources	31
Applied to bonds, stocks, etc., per cent. of total resources	46

The pitiful proportion of banking resources applied to commercial discounts in the United States is seen at once when comparison is made with Canada.

Practically the whole banking business of the Dominion is in the hands of the chartered banks—now thirty-four in

number, with some 1,912 branches. On 31st August, 1907, their showing was:

Investments in stocks, bonds, etc..	$72,045,783
Call and short loans on stocks and bonds, Canada. ..	47,765,531
Call and short loans on stocks and bonds elsewhere..	62,088,232
Total allotted to stocks and bonds..	$181,899,546
Current loans and discounts (commercial paper) in Canada..	580,075,932
Total assets..	950,160,583
Applied to stocks, bonds, etc., per cent. of total assets.	19
Commercial paper, per cent. of total assets..	61

It will be easier to understand what the diversion of banking resources into bonds and stocks means to the commercial and industrial interests in the United States when it is explained that if the same proportion of banking funds were applied to mercantile discounts as is so applied in Canada the United States banks would hold $11,930,894,179 in commercial paper instead of the $6,060,468,537 shown in the foregoing table. In other words the amount would be practically doubled.

The diversion of this immense sum has, of course, been a great convenience for the corporations issuing securities. It has saved them from applying to Europe for capital. Had they been obliged to do so they would doubtless have been forced to render a stricter account of their affairs. But it is not difficult to see that the diversion has inflicted a fearful handicap on trade and industry. One way in which it has done so is through almost banishing the inland draft or bill of exchange from the country's domestic economy. In Canada these drafts—of wholesalers and manufacturers upon their debtors—fill a very important part in enabling men of ability and experience, but having only a moderate amount of capital, to engage in business. Here it is a regular function of the banks to discount these drafts. The banks across the line do not do it to scarcely any extent. Manufacturers and wholesalers there, as a rule, have to wait till their debtors send cheques to settle their accounts. One result is that a larger capital is needed in the States to carry on business—thus monopolies are encouraged.

A number of other points might be brought up. One has to do with the cost of administration. As before men-

tioned, each local bank has its president, vice-president, local board, cashier; each branch bank would need simply a manager. The cost of operating the latter must necessarily be much less. If, on the average, it amounted to the moderate sum of $2,000 per year for each of the fourteen thousand banking offices, the aggregate would be $28,000,000 per year.

It is argued, when this last point is made, that the cost of administration does not deter the constant investment of new capital in banking, and that it does not prevent the most satisfactory profits being earned on that capital when embarked.

But the reason is because the cost is laid wholly on the people. The banks in the States do not provide the same facilities for the people as the branch banks of Canada do. South of the international boundary very many places are without banking facilities. North of it scarcely any of respectable size are without them. And where the facilities do exist the American banks do not take the same care of the manufacturers and business men in their locality as is done in Canada.

Another objection to the branch banks is raised in regard to the building of bank offices to serve as branches. With the present system of local banks there is quite a pronounced disposition to build handsome or impressive buildings even in places of moderate size. If branch banks were introduced it is claimed that economy in branch office construction would be the rule, and the various localities would not get the benefit of so many good buildings. It may be admitted that this notion is probably correct in the main. But the experience in Canada goes to show that the banks follow a policy of erecting very handsome and costly branches at central points. Winnipeg furnishes a good example of this policy. Some of the Eastern banks have erected there buildings to serve as branches almost, if not quite as good, as their head offices. Also in the smaller places the tendency is to build handsome offices that are a credit to the localities possessing them. But the matter is of minor consequence. The great point is that branch banks in the United States would furnish a vast deal more aid to commerce and industry, and would make for greater stability and strength.

H. M. P. Eckardt.

A BANKING OUTPOST.

IT is now a little more than a decade since the whole world vibrated from pole to pole, with the magic word "Klondyke," and much has been told regarding the boundless wealth of this far-distant region. However, perhaps I may be pardoned for intruding, at this late date, the following few remarks regarding this, to many people, very interesting country as it appears at the present day through the eyes of a Canadian bank officer stationed at Dawson.

As many people are aware, the first great "strike" was made by a man named Carmack in the summer of 1896, and the fame of the country dates from that time. For many years previous to this, prospectors were working in the country, but none of the rich pay-streaks were discovered until the above date. "Bob" Henderson, an old-time prospector, who is still in the Klondyke, and who is known to me personally, was prospecting within a very few miles of the site of Carmack's discovery as early as 1885, and is generally spoken of as "the discoverer of the Klondyke."

It is now a matter of history how the news of the great strike spread throughout the world, and the enormous tide of humanity surged over the country in a frantic rush for the gold-fields. Volumes could be written of the many hardships encountered, of lives lost, of crimes committed, and hearts broken.

It can readily be understood, how, in these early days, the population coming into the country was, for the most part, of the wildest and most undesirable class, and this will account for what seems like the large percentage of crime committed during the great rush. It is, however, very creditable indeed to the Royal North-West Mounted Police, that law and order were maintained as well as they were, considering that within a comparatively short time there were 30,000 people resident in Dawson alone.

It is probable that some doubt still exists in the minds of many people as to the exact position of the City of Dawson,

in the Yukon Territory, which latter may be described by saying that the city is situated at the junction of the Klondyke and Yukon rivers, and is about 550 miles down the Yukon from White Horse, Y.T.

The nearest gold bearing ground being worked at the present time, is situated about one mile from the city limits, while the distance from Dawson to the site of Carmack's discovery is thirteen miles. This "find" was made upon Bonanza Creek, the richest in the Klondyke. The mouth of Eldorado Creek, of great fame, where much of the ground produced $2,000 to the running foot, is one mile above Carmack's discovery, and empties into Bonanza Creek. There are a great many different creeks, mostly gold-bearing, in a greater or lesser degree. Among the best gold-producing centres of the country, is the small town of Granville, situated about fifty-five miles from Dawson, upon Dominion Creek, where there are still a goodly number of individual miners working.

Of course it goes without saying, that anyone who has read accounts of the early days in the Klondyke, should not come to Dawson with the expectation of finding things as they were ten, or even five years ago. Probably no place changes so quickly as a placer mining camp. Like a flash of powder, it springs into life, and lights up the world; but only for a short space, as it quickly dies down and becomes extinct. It is, however, a noteworthy fact, that Dawson, and the country surrounding it, have survived wonderfully well, all things considered, and the present condition of the Camp is most favourable, remembering the length of time that has elapsed since the original stampede.

A little further on, I will compare the state of affairs at the present day, with the conditions which existed a few years ago.

Soon after the rich Klondyke strike became generally known to the world, two Canadian banks, with characteristic enterprise, came to the country, namely, The Canadian Bank of Commerce, and The Bank of British North America. They both established branches in Dawson, and here they have remained to the present day. The story of the opening of the banks here, and the first few months of business, is most fascinating, and is more like a weird romance than a cold relation

of fact coming within such recent years. Space will not permit of more than a few remarks on this subject.

When the staffs for the two banks were selected, none but senior men were chosen. They were allowed to outfit themselves without limit at the bank's expense, and nothing was left undone that would in any way be conducive to their comfort, upon their long and uncertain journey. The staff selected by The Canadian Bank of Commerce, proceeded to Vancouver, where they embarked for the four days' trip up the Coast of British Columbia, and Alaska, to Skagway. From Skagway they had to proceed upon foot, under considerable hardships, over the Chilcoot Pass, through a mountainous and unbroken country, until they came to the string of lakes, the largest being Lake Bennett. Here they embarked in canoes, together with their personal outfits, and also the necessary supplies and fittings required for opening a branch bank. They also carried a large consignment of provisions. Proceeding to the northern end of Lake Bennett, they again travelled overland to a point near the head of the Yukon River, where canoes and a scow were obtained, and the last stage of the long and trying journey to Dawson, a matter of some 550 miles down the mighty Yukon, was commenced.

Upon arriving at Dawson on the 8th June, 1898, they found everything in a state of turmoil and excitement. Crowds of people were arriving down the river in all kinds of craft. Food and all the necessaries of life were held at exorbitant prices. Oranges and eggs were at one time $1.00 each, and a meal consisting of a saucerful of baked beans, a small piece of bread and a cup of tea cost $1.00 or $1.50, and the quality was none of the best. This was the state of affairs in Dawson as it appeared to the bank clerks in 1898.

The staff of The Bank of British North America arrived about three days before that of The Canadian Bank of Commerce, and both banks immediately opened for business in the roughest, temporary quarters imaginable. These were not required for long, however, as substantial log buildings were soon erected. Business came with a rush from the start, the principal part of it being the purchase of gold dust from the miners, who would be waiting in line long before the banks opened in the morning.

The cost of operating a branch bank in Dawson in the early days was enormous, and, consequently, the rates of exchange and interest were proportionately high. Looked at now in black and white, by people unacquainted with the circumstances, the rates charged in the early days seem exorbitant, but this was not the case, owing to the very enhanced cost of maintaining a branch in such a place.

Owing to the great cost of living in Dawson in the early days, the bank clerks at that time received larger salaries than their *confrères* on the "outside," as the rest of the world outside the Klondyke is still called, but these have since been lowered in proportion to the decrease in the cost of living.

And now let us consider the volume of business in the early days, compared with the same at the present time. In the six years ending with 1903, the estimated output of gold from the Klondyke, according to the official report of R. G. McConnell, B.A., Government Surveyor, was as follows:—

1898	$10,000,000	1901	$18,000,000
1899	16,000,000	1902	14,500,000
1900	22,275,000	1903	12,500,000

In the year 1907, the output was approximately between $2,000,000 and $3,000,000, and in the present year the output may be even less, though it is quite possible that owing to the increased number of dredges and large plants recently installed, the current season's production may exceed the above figures to some extent.

As nearly all the gold produced to date has been handled by the two banks, and as the purchase of gold dust, together with the various items of business connected with it, forms a very large proportion of the work of the banks in Dawson, it is evident that the amount of work to be done by the banks must be decreasing, and it is, therefore, not necessary to maintain such large staffs as formerly. Each bank at the present time employs from eight to a dozen clerks, according to the season, there being more work to do in summer than in winter.

The gradual working out of the various creeks, and the consequent decrease in the annual output of gold, has had the effect of diminishing the population of Dawson, until it now

stands at from 1,500 to 2,000 people (estimated), according to season, there being more in summer than in winter. It has also, of course, been the cause of a large number of stores, etc., being closed, and otherwise abandoned.

In August, 1900, the White Pass and Yukon Route commenced running trains over the White Pass, connecting the ocean boats at Skagway with the river boats then running upon the Yukon. This is the usual method of reaching Dawson at the present time. Passage can be taken by boat either from Seattle, Wash., or from Vancouver, B.C., to Skagway, Alaska, the time taken being about four days. The next stage, from Skagway to White Horse, Y.T., is taken by train, the journey occupying the greater part of a day. The last stage is made in summer by river steamer down the Yukon from White Horse to Dawson, the time being about forty hours, while the journey back against the stream occupies from three and a half to four and a half days, according to the depth of water in the river, and other conditions, and this will give some idea of the strength and speed of the current in the Yukon. In winter time, when the river is frozen over, it is necessary to travel by sleigh from White Horse to Dawson, the journey of about 325 miles by road requiring from five to ten days, according to the condition of the trail, but five days is the usual time.

For some time in the spring and fall of each year, travelling to and from Dawson is very difficult, and for a while is practically impossible. In the spring, this is owing to the trail breaking up, and stopping the sleighs, before the river opens to allow her boats to run. In the fall the reverse is the case, the river becoming blocked with ice before the trail is in condition for the stages. This suspension of traffic, especially in the spring, causes a good deal of trouble and annoyance; and considerable correspondence, telegraphing and other labour would be saved to the banks and importers here, if shippers and bankers "outside" would fully realize the difficulties to be encountered in shipping goods to Dawson promptly in the spring, and in obtaining immediate replies to letters, which are sometimes held for indefinite periods by the Postal Authorities, awaiting an opportunity to offer for forwarding. Even the telegraph line is frequently "down" for days at a time, when all communication with other points is cut off.

One of the chief questions, perhaps, usually asked regarding the Yukon Territory is, "What is the climate like?" and this reminds me of the reply of the farmer in the North-West to a similar question regarding his district, which was "We have two seasons, July and Winter." This is probably what most of the uninitiated imagine to be the condition here, but such is certainly not the case. The climate is dry and wonderfully healthy, and the summers, as a general rule, are all that could possibly be desired, though sometimes a more or less wet summer is experienced. In fact, one might well compare the summers in the Yukon to those in south-western British Columbia. The winters are rather long, lasting practically from the middle of October to the middle of April, though the snow lies upon the ground somewhat longer. It is hard to give the average winter temperature, but, as a rule, there are a great many days when the mercury is no lower than 20 degrees below zero, and this is considered nice, comfortable weather, but when it drops to 40 degrees below zero, and stays there for a week or ten days, it is not so comfortable; while it frequently drops to between 60 and 70 degrees below zero.

The clothing worn by the bank clerks here in winter is precisely the same as used elsewhere, because the offices are always kept at a comfortable temperature. All that is required is a good fur coat for use in going to and from the office.

The Yukon river freezes about the end of October, and remains closed until the first week in May, but the boats are not able, as a rule, to run between White Horse and Dawson, until the first week in June, or even a little later, owing to the huge masses of ice drifting down stream, and also the fact that the ice in Lake Labarge, through which the Yukon river passes, does not break up until quite late.

I have already given some idea of the cost of living in the early Dawson days, so now let us for a moment compare the same with that of the present day. A very good meal at a restaurant costs anything from a dollar upwards, though rough meals at cheap eating-houses are advertised at fifty cents. Good board by the month, at a restaurant or boarding house can generally be had for about $50 to $60 per month, without a room. The smallest coin in circulation to-day is the twenty-five cent piece, while in the early days, nothing under half

a dollar was of any use. It will readily be seen, therefore, that the cost of small articles is considerable, the next price to twenty-five cents, being, of course, fifty cents, and so on. In the winter time, a ten cent magazine costs seventy-five cents. Beef at any time is forty-five cents or fifty cents a pound. Bread is sold at ten cents a loaf, though in buying a small quantity it would be necessary to pay twenty-five cents and take two loaves. In a similar way, a person requiring a postage stamp would have to buy twenty-five cents worth. Fresh fruit is practically unobtainable in winter, while in the early summer four small plums cost twenty-five cents.

And now let us consider, for a brief space, the peculiarities of the country from a bank clerk's point of view. It has already been said that the smallest coin in circulation is the twenty-five cent piece, and this, of course, is a great convenience to the teller, who is saved the bother of handling small silver and coppers. Thirteen cents on a cheque is paid as twenty-five cents, while twelve cents is not paid at all. No savings bank departments are kept by the banks in Dawson, consequently there is no interest to be made up at regular intervals. High rates of exchange and discount are charged upon loans, cash items, collections, etc., but, as has already been said, this is necessary on account of the great cost of maintaining a branch here. As the exports of the country surrounding Dawson are practically confined to gold dust, and as this latter is mostly bought and shipped by the banks, there is scarcely any remitted discount business. Considerable trouble and annoyance is often caused to the bank staffs in Dawson by the apparent ignorance of banks "outside," when forwarding items for collection, etc. It should be borne in mind that in winter time, or early spring, a letter often takes from three weeks to a month to get from Eastern Canada to Dawson. It should also be remembered that the drafts and documents almost invariably reach the banks here some considerable time before arrival of goods, and consignees will not, as a rule, take up drafts until goods arrive. Very definite instructions should, therefore, be given, when forwarding items to Dawson for collection, remembering that wharfage, warehousing and insurance rates are very high, and that protest fees are $5.00 and other legal costs in proportion.

A very large part of the business of the banks is still the purchase of gold dust. Each bank maintains an assay office, fitted with all the necessary plant for melting the gold dust into bricks and having the same assayed. A professional assayer is engaged by each bank during the summer season.

It has been stated that the population of Dawson in summer is about 2,500 people, but this does not include the large number of people distributed along the different creeks and elsewhere adjacent to Dawson. For instance, the Yukon Gold Company, an immense concern connected with the Guggenheim interests, alone employ at the present time about 2,000 men, who are busy installing the elaborate works of this large concern. These include dredges, hydraulic lifts, ditches, pipe lines, etc., all designed for the reclamation of gold from the various creeks.

And now just a word regarding the sports and pastimes enjoyed in this far north land. In summer a variety of sports are indulged in. Tennis is played upon the four courts maintained in Dawson. There is an excellent rifle range, at which first class scores are made by a large number of enthusiasts. Hunting is indulged in by those who care for it, and can get away for some time. Moose, caribou, and mountain sheep are plentiful, but it is necessary to go somewhat far afield, as a rule. Fishing has its aspiring Isaac Waltons, the fish caught being mostly greyling. Cricket and football are sometimes played, and baseball has many adherents. There is a very nice swimming bath in Dawson, at which aquatic carnivals are held during the summer. Riding is also enjoyed by its devotees.

Out-of-door sports in the summer time can be indulged in until almost any hour of the night, owing to the perpetual daylight enjoyed in this northland during a large part of the summer.

In winter the programme is very different. First and foremost is skating, which is much enjoyed by almost the entire population. There is an excellent skating rink, with large accommodation for spectators, and many carnivals are held. Hockey is also played quite often. There is a curling club in Dawson, and in the winter of 1907-8 it numbered over a hundred active members, and ranked among the leading curling clubs of the world. There is a large variety of winter sports,

too numerous to mention, such as snowshoeing, skieing, tobogganing, sleighing, dog-driving, etc.

It is natural, of course, that the cost of entering into these various sports should be considerably more than it would be elsewhere. A few instances might be mentioned, such as the hiring of a saddle-horse from a livery stable, for which the minimum charge is $5.00 for however short a time, and not exceeding half a day. Swimming costs $1.00 per swim, while the terms for tennis are $20.00 for the first season, and $10.00 per season afterwards.

In conclusion, in speaking of the Yukon, I consider that it has a future before it; prospectors are busy looking for fresh "strikes," and considerable enterprise is being shown in the endeavour to locate quartz, and if the existence of this latter in sufficient quantity and value should be proved, the future of the Camp would be doubly assured, and the stirring times of '98 would no doubt be repeated.

F. W. HEATHCOTE.

ABNORMAL FEATURES OF AMERICAN BANKING.

Address by B. E. Walker,
President of the Canadian Bank of Commerce.

Given at a Meeting of the American Bankers' Association, Denver, Colorado, 30th September, 1908.

SOMEBODY once said to a celebrated English statesman, renowned for his clear perceptions of all economic subjects, "I suppose you understand all about the currency"—to which the reply was, "No, indeed I do not, but I believe there *are* people who do." Most of us are willing to admit that the currency is a complicated mystery. We may feel sure that we can trace the effect on the general financial situation of this or that particular factor, but we have to confess that we cannot balance the effect of all of the factors and state clearly even after a panic, what has caused the disturbance and what we must guard against in future. But when we consider the currency and banking system of the United States, and remember what we have experienced in the panics of 1873, 1890, 1893 and 1907, we need not hesitate to admit that something is radically wrong, whether we can agree either as to the disease or as to the remedy. I have ventured by my title to suggest that there are abnormal features in United States banking, and this presumes that banking can be reduced to norms, and that aberrations therefrom can be demonstrated as such. I am not sure, however, that many clear principles in banking can be set out which are applicable everywhere. As a rule, the banking and currency of a country have been intercepted in their natural development by the effect of war or by unwise creation of public debt, and, unfortunately, sometimes by the mere ignorance of legislators. When the natural trend of the banking of any country has been thus thwarted, time usually brings about, either by direct form or by artificial compromises, such adjustments as are necessary to make the banking system reasonably useful to the country which it is supposed to serve.

In naming the prominent causes of deflection I placed ignorance last, but perhaps it should be placed first. As the great English statesman hinted, few understand the currency, and the country which in its constructive period possessed among its citizens a genius who among his other great deeds as soldier and statesman was determined to restore the disordered finances of his country and to set in the right path for the future the great industrial agency of banking, was unusually fortunate. Such a country was the United States at the close of the eighteenth century, and such a citizen was Alexander Hamilton. He doubtless knew little about our currency and banking when he began, and we can almost see his mind turning, in the weltering confusion of the time, from one expedient to another in order to find a course which was sound financially and at the same time suited to the poverty of a country possessing a depreciated currency and no capital with which to create banks. He had about him the two usual types of advisers—those who were willing to try any course of reckless folly in order to escape from the present evils; and those who, while bewailing the evils, were unwilling to depart from the narrowest course of safety. This second class we have always with us—men only too ready to criticize, to point out dangers they are too timid to face, but never ready themselves to suggest a remedy for the evils to be dealt with. There were happily in those early days a few men of courage, sanity and intelligence in finance besides Hamilton, such as Morris, Gallatin and others, but the man of distinctly constructive ability was Hamilton. It does not seem to be material that some of his views regarding finance have been shown by time to be unsound, or that he was trying not so much to discover the abstract principles of banking as to mend the broken fortunes of both state and individual by trying to establish banking and public and private credit on a sounder basis. Unfortunately—very unfortunately, in my opinion—there was a line of political cleavage of vast importance, which influenced profoundly the discussion of banking then, and which still remains the fundamental difficulty in the path of reform. Hamilton strove with all his might for everything which would make a strong central power, he being unable to conceive how a great nation could otherwise be created. The extent to which

the thirteen units of government then joining in the United States should retain or give up their powers of government was a matter of compromise, but, I fancy, Hamilton would have approved of the plan we adopted in Canada in 1867—that is, to give the Provinces certain powers and reserve all other phases of sovereignty for the Federal Governmnt. Among the powers possessed only by the Federal Government of Canada is that relating to banking; but in the nascent United States the thirteen States already possessed many small banks, and besides this, the fear of the concentration of power of any kind was widespread. Apart from these obstructions to a sound course, the country did not possess the capital with which to create a great industrial bank. The fear of partial ownership, including the control of the stock, by the state, existed among many, very rightly, I think; and the fear that a great bank of which the control was owned privately might fall under the power of foreigners, perhaps of England, was certainly natural enough at that time. In the midst of such difficulties the first Bank of the United States was founded, but in a few years, and while, as we can now plainly see, it was doing its allotted work very well indeed, it was strangled by those who favoured the small banks. Almost immediately the second bank of the United States followed, only to meet a similar fate at the hands of Jackson. Thus, for the second time, a system of banking which might have made the country strong to meet financial emergencies, which tended already to make the various scattered parts of the country cohere in commercial matters, which was rapidly creating credit in Europe, and which with all the inevitable faults of youth was performing the functions claimed for it remarkably well, and was destroyed in favour of an incoherent system of individual state banks.

I am a foreigner, but as five of the establishments included in the bank of which I am president are situated in cities of the United States, I hope you will not regard me as a foreigner for the moment. There are very few banks in the whole country who have a larger interest in the soundness of your banking and in your freedom from panics than my own bank. Remembering my peculiar position, I am particularly desirous not to wound the susceptibilities of any of my hearers, but I hope it is safe to say that Alexander Hamilton was clearly

the leading intellect in that wonderful group of men who framed the constitution. At a time when few men could withstand the onrush of new ideas, largely visionary and false, which accompanied the French Revolution, Hamilton was unshaken in his clear vision as to the future of his country, and few will deny that where you followed his advice you did well, and where you opposed it you did not always act wisely. It may be argued that neither of the two Banks of the United States were so admirable in their careers that we need sigh over their removal, but we can only judge them by comparison with the smaller banks of the same period. In your colonial and revolutionary times you had a curiously full and varied experience in banking and currency. Fiat money, depreciated coinage, currency based on land, clamour by debtors for cheaper money with which to pay debts, were all amply experienced. In the following period, contemporaneously with the first and second banks of the United States, you passed through a time largely of mania in banking; a time when history was recording for this country such fundamental facts as that banks cannot establish a capital fund merely upon the promissory notes of shareholders; cannot put bank notes into circulation, even by the expedient of sending them far from home before issuing them, without considering how they are to be redeemed; cannot lend money on land, or lock it up in other ways, and also have it again when the bank's debts, exigible on demand, fall to be paid. Indeed, it was a time when every vagary in unsound banking was being tried. But Hamilton, from some of these experiences and from European history, planned for you a banking system which contained much of what is good in the successful systems of the world. You would not, however, have his system, but preferred to repeat in each new district, from east to south and west, wherever debt and ignorance combined to create banking and currency, the same errors which make such startling history in the early part of the nineteenth century. Is it not time for us to put aside that silly vanity to which democracies are inclined—that it is better to try our own experiments and to ignore history? Unfortunately the apparently brand new experiments we are willing to try have usually occurred to others in the past, if we had but patience to discover the fact.

I may as well at this point admit that I have nothing new to say. I am merely trying to put facts and arguments made many years ago into a new form. We are dealing with a case where the patient has immediately after each serious illness exclaimed: "What shall I do to be saved?" has repeatedly been given good advice by the experts of his own country, and has never yet in any particular acted in accordance with such advice. What seems to be necessary is not so much to suggest means of reform, as to induce the patient to believe firmly, once and for all, that if he persistently neglects all remedial measures the next attack may leave him in a state past all aid. Any purpose I have in reading this paper will be amply served if I can for one brief moment lay emphasis upon the disagreeable fact that while reform in the banking and currency systems of the United States is absolutely necessary, there is no probability whatever that any substantial reform will take place at the moment.

The profound line of cleavage which made it so difficult to create the first bank of the United States, and which destroyed it and its successor, still exists. It lies between those who favour a system of banking good for the nation as a whole, as opposed to a system of banking which may be right or wrong for the great number of units engaged in the business of banking, but which is clearly not right for the nation as a whole.

It is not possible in the short time at my disposal to review all the features in the banking of the United States in which the obstacle to reform lies mainly, or altogether, in the existence of numerous small banks, but with your permission I shall take up a few of the leading features.

Reserves.

Most prominently I would place the so-called fixed reserves—the attempt by law to fix the minimum percentage of cash to be held by each bank against its liabilities.

The real reserve requirements of any particular bank differ from those of other banks in accordance with the nature of its obligations as compared with theirs. It is conceivable that the ideal point at which cash reserves should be kept would be

different in the case of any ten or twenty banks which you might select for comparison even in the same city or community. The bank which acts mainly as a banker for other banks needs very large reserves indeed. A bank in the same city doing mainly the business of manufacturers, merchants, exporters, etc., will need altogether smaller reserves, and a bank gathering the savings of a quiet country community needs much less again. The law attempts to recognize these facts, but is evidently unable to do so except in a most imperfect manner. Clearly each bank, if it could be trusted to have sufficient intelligence, should be the judge of the reserves it should keep, and it seems safe to say that if you had continued to create large banks with branches, instead of thousands of small banks, the attempt to provide wisdom by law would never have been made. You would doubtless have done as all other nations have done, and not have been an exception to so general a rule.

If the wrong done only resulted in causing some banks to keep more reserves than they actually required, little would need to be said; but, as has been shown, the law can be so worked as to provide reserves quite too small, and experience shows that banks, as a rule, choose to keep reserves larger than the law requires. The defect in the law, however, is that by arbitrarily fixing the minimum reserves which must be always in hand, it practically forbids the use of the reserves for the very purpose for which they have been created. The law undertakes to supply that wisdom which it presumes the thousands of bankers do not all possess, and to lay by for them against the rainy day the provision which it presumes they would not be prudent enough to make. But who is to supply the wisdom demanded by such authorities as Walter Bagehot, who says that in a panic the sound banker should lend to the bottom of his box? In times of peace the wise prepare for war, but when war comes the army is flung into the field, not still held in reserve. The law, however, having forced the sequestration of so much cash and cash resources against the day of trouble, provides no means by which, either under its own wise and paternal direction or at the discretion of the bankers unaided by the wisdom of the law, the cash thus provided may be used to avert disaster.

I do not wish to be understood as claiming that the present law should be repealed and the thousands of individual banks be left to do as they like. I presume it is true that they cannot be trusted, and that because of the folly which destroyed a more natural system of banking you have condemned yourselves to submit to a paternalism which fixes your cash reserves for you. But I urge as one of the great evidences of the unnaturalness of your system of individual banks the fact that they cannot be trusted to take care of their own reserves, and that no law has been devised which will act the part of Providence for them. I do not maintain that where the banks are larger relatively to the country, as in Canada, they are always wise enough to keep sufficient reserves. It is, as we know, a subject much discussed in many countries, and it would be well, indeed, if banks could in some way be forced to keep larger reserves, provided there be no interference with the use of these reserves when the hour of danger arrives.

Everybody admits the mischief created in the United States from the inability to use legally the reserves for the very purpose for which they are held, and I do not remember that anyone has suggested a better remedy than that which takes place in every panic, viz., the breaking of the law by simply not maintaining the reserves. But through the press the public is kept keenly aware as to the exact point in the New York reserves below which the use of them will be illegal, and thus the panic is increased by the very attempt to get at the cash necessary to allay it, while under any ordinary system the panic could probably be averted altogether by a wise use of the cash in hand, instead of being allowed to reach a stage where it can only be stopped by almost superhuman efforts after it has run part of its course of ruin and disaster.

I think the following statement will show that almost every panic since the war could have been prevented or arrested early its course by the natural use of only a reasonable part of the actual cash in hand:

NEW YORK CLEARING HOUSE.

	1873	1884	1890	1893	1907
1. Cash reserves at beginning of panic.....	$53,152,500	$86,911,000	$99,773,100	$110,410,900	$267,610,500
2. Surplus over legal requirement.....	3,642,475	4,455,450	701,975	8,776,800	11,182,650
3. Reserves at lowest point as compared with legal requirement.....	19,669,000	67,536,700	91,801,400	76,505,500	215,850,100
4. Deficiency in reserves at this point.....	18,893,075	6,607,125	*2,429,650	17,545,375	54,103,600
5. Date of first issue of Clearing House Certificates.....	Sept. 22	May 15	Nov. 12	June 21	Oct. 26
6. Date of maximum issue of Clearing House Certificates.....	Nov. 20	June 6	Dec. 22	Sep. 6	Jan. 30, 1908
7. Date when last Clearing House Certificate was retired.....	Jan. 14, 1874	Sept. 23, 1886	Feb. 7, 1891	Nov. 1, 1893	Mar. 28, 1908
8. Maximum amount issued.....	$26,565,000	$24,915,000	$16,645,000	$41,490,000	$101,060,000

* In 1890 the reserve fluctuated considerably from the first of July to the end of the year, and was below the legal requirement frequently before the issue of Loan Certificates. On Sept. 13th the deficit was $3,306,925, and two weeks later the excess was $14,075,400.

Clearing-House Certificates and Re-discounts.

In order to avert panics, and also in order to avert the failure of an individual bank with sound assets, something more may be necessary than the unrestrained use of the cash and quick assets in hand. The ability to re-discount should exist somewhere within reach. The great banks of a country should manage so as not to require such aid, but small banks in most countries require it from time to time, and not merely at the moment of a panic. Under ordinary conditions a bank in the United States requiring to re-discount some of its paper can do so, but if there is any financial strain, all bankers, big and little, begin to button up their pockets and re-discounts soon become nearly impossible. Indeed, instead of the banks in the great financial centres, where alone the power to aid could be expected to exist, being able to help their country friends, some of them are soon unable to get along without aid from other members of their own city clearing-house. But there are almost no banks of such national importance that they feel the necessity of aiding directly their weaker brethren, whether it is convenient to do so or not, and thus the clearing-house certificate came into use. It is not only a splendid tribute to the genius of the American people for organization, but so long as its use is between banks alone it is a perfectly natural and a most effective plan for allaying a panic that has once been created. It could also be made an instrument in connection with a proper use of reserves, to largely avert panics, if only some wise autocrat could be entrusted to decide when clearing-house certificates should be issued, but as to the moment of necessity there is never likely to be unanimity of opinion so long as the decision depends on the judgment of several bankers. And therefore the illegal use of the cash reserves and the issue of clearing-house certificates must always come too late to prevent the panic. They may alleviate and cure, but they are not available to prevent. Still they are such a natural and efficient means of making the banks who have abundant reserves

* William A. Nash: "Clearing-House Certificates and the Need for a Central Bank."—*Annals Am. Acad. Pol. and Soc. Science*, March 1908.

help those who have not, that we may expect to see clearing-house certificates or something closely akin to them in other countries where there is no great state bank to whom smaller banks may go with some show of right.

Until the latest panic these loan certificates were only issued in the largest money centres, but on this occasion they were issued by fifty-one clearing-houses, and doubtless in the course of future panics they will become practically available to every bank. The wide extension of their use, however, raises a new question. Used in the real money centres and issued only in large blocks between banks they remain what they were intended to be, mere loan obligations assisting banks to build up their reserves, and also enabling them to make additional loans to customers who but for such aid might fail. But the extension of their use to numerous cities and towns where actual cash supplies are nearly exhausted, and the issue of these loan certificates in small denominations to the general public as currency, in open defiance of law, while creditable to the ingenuity and audacity of the American people, are new features of an alarming character. There are dangerous expedients we praise ourselves for resorting to when heroic action is necessary for the general safety, but which are little better than crimes if they are repeated. An able banker * has referred to clearing-house certificates as an "emergency circulation," and as an "asset currency" that even he would approve of. I think much mischief will arise if these loan certificates are ever generally regarded as anything other than what they were originally—a species of re-discounts between banks. Currency, to be such, should be available between the banks and the people, and should surely be legal whether it is wisely issued or not.

But before leaving the subject of clearing-house certificates let us consider how their use, and volume, and abuse, are affected by the existence of thousands of individual banks instead of a comparatively few large banks with branches. Whether we have one system or the other the actual cash will accumulate largely in the few great monetary centres. In the case of individual country banks the cash not needed at home goes to their reserve agents, while in the branch system the series of branches of any one bank are practically one clearing-

house with a settled tendency to accumulate actual cash beyond the mere necessities of the till, in the money centres. While retained in these centres, the cash, except to the extent of the reserves, will be employed in some manner so as to earn interest. Now, the extent of the reserves necessary on the one hand, and the extent to which the surplus funds may be lent on the other, is a matter of experience in both systems, but the experience is very different indeed. If we take as examples a bank in a reserve city with one hundred banks as correspondents, and a single bank in another country with one hundred branches, we can readily see the difference. In times of strain the one hundred branch managers do not ask for cash from the head office unless it is actually needed; on the contrary, the moment contraction of loans begins they are a source of strength to the head office. The credit affected and the thing to be managed is one organism. Within this organism fear of each other by its component parts will not enter, and whatever courage its executive possesses will actuate every part of the organism. But in the other case there are a hundred organisms and no cohesion, except that, the skies being bright, all will cohere somewhat, not with each other, but with the one bank in the reserve city. And if the skies are overcast we have a hundred utterly selfish organisms all concluding that their balance with the bank in the reserve city would be better in their own vaults; in any event they would sleep better if it were there. And so we have the extraordinary spectacle which accompanies every panic in the United States in each particular one of the thousand banks trying to stand alone, except to the extent that the clearing-house certificates have made them cohere. Almost every bank wishes to withdraw its balance with other banks, and as this is an absolute impossibility, the panic reaches its crisis, currency payments are suspended, all currency is hoarded and passes to a really large premium, and the ingenious expedients to which we have referred, whether legal or not, are made use of with that general concurrence by the people and the banks which only exists in the face of a great national danger. The great national danger is that the panic may cause national ruin. But what is a panic? A widespread fear without cause. In most countries financial panic is caused by fear on the part of those who are not a part of the national

finance—who are not bankers and such. But in the United States, whoever may start the panic, those who accentuate it most are the thousands of individual banks by their distrust of each other. We speak indignantly about the private individual who draws his deposit in currency and hoards it. But in time of panic the most active agency in drawing out currency and hoarding it, is the country bank. And it is not the fear of the failure of banks, but the fear of the disappearance of currency, which aggravates panics, and brings about disaster and terrible reduction in values. To sum it up, it would appear that the same elements which in the United States cause panics of the most ruinous character would not be apt to cause panic at all in better regulated countries. In such other countries, firstly, the reserve cash would be instantly available; secondly, the banks would not be likely to fear one another, but would cohere in meeting any panicky feeling on the part of the public; thirdly, the power of re-discounting or of issuing clearing-house certificates would need to be used to but a small degree if only the demands of the public had to be met and not the demands of thousands of individual banks; fourthly, with these things assured and a reasonably flexible currency, no stoppage of currency payments would be likely to arise.

The Treasury System.

Flexibility in the use of cash reserves, in obtaining rediscounts, in distributing Treasury balances, and in the issue of bank currency, still seem the main features to be discussed. I have little to add to what was said years ago regarding the Treasury. Then it needed some courage to say it, but now even a Comptroller of the Treasury, writing early in 1908, does not hesitate to sum up the whole evil in the following frank statement.* "But look at the situation. The United States Government has collected from its people $245,000,000 surplus, above its necessary expenditures, and in order to restore this money to circulation and *repair the damage done*

* Wm. Barrett Ridgely: "An Elastic Credit Currency as a Preventive of Panics."—*Annals Am. Acad. Pa. and Soc. Science*, March, 1908.

to business by its withdrawal, has had to deposit $222,000,000 with the national banks; and when the supply of Government Bonds gave out, has had to accept various other bonds as security." And in the same connection he says of Secretaries Gage, Shaw and Cortelyou, that "they are all entitled to the highest praise and commendation for what they have done to make the best of bad situations, with antiquated, complicated and cumbersome facilities, often little better than mere make-shifts." But why not face the fact that the present Treasury system was created because of the destruction of the system of large banks in favour of the system of small banks, and would never have existed elsewhere? Under the present system there is no one bank and no series of banks to which the United States people, as they are represented by the Federal Government, can entrust their balances without very complicated arrangements, including the deposit of security. Whatever may be the remedy, in the meantime we must add the Treasury system to that list of abnormal features which this country has to bear because of its thousands of individual banks.

Bank Note Issues.

The fourth main element in banking in which flexibility is necessary is bank note issues. This has become a hackneyed subject during the last fifteen years or more, but, indeed, it has never been long out of the arena of discussion regarding banking in this country since early colonial days. The currency, as we have said, is a complicated mystery, and for that reason it has a strong hold upon the imagination of the average man. But in addressing an audience of bankers it might be well to avoid the broader definition of money, and to try and separate the credit instruments usually issued by banks and passing as money, from metallic money, paper money representing metallic money, and paper money based on the debt of a government. The species and qualities of money current in the United States on 1st August were approximately as follows:—

Gold Coin and Bullion	$811,541,020
Silver Dollars	79,303,982
Subsidiary Silver	147,005,385
Gold Certificates	818,758,869
Silver Certificates	484,054,000
United States Notes	346,681,016
Treasury Notes of 1890	4,903,000
National Bank Notes	692,088,991
	$3,384,336,263

The figures given above do not include an equivalent amount of gold coin and bullion and silver dollars held in the U. S. Treasury as a redemption fund for the gold and silver certificates outstanding.—(Taken from *The Commercial and Financial Chronicle*, New York.)

From this it is apparent that in the United States there is no currency of the kind usually known as bank note issues, the notes issued by national banks and guaranteed by the Government being a species of money based on the debt of a government. There were bank note issues before the war, and, as we know, they were retired for arbitrary reasons connected with the finances of the Government, and not for the purpose of improving the system of banking. We also know that while the national bank notes which took their place possess good qualities not possessed by the old State bank issues, they also carry with them the grave defect of rigidity which accompanies nearly all Government note isssues. Under the new "Currency Association Law," permitting an emergency circulation, bank issues are to be permitted, but under restrictions which practically amount to an admission that the issuing of credit notes is too dangerous a franchise to be granted to a bank under ordinary circumstances. Indeed, the whole machinery for these emergency issues is so difficult that the Act may quite fail in its purpose. In Canada at about the same time we also passed an Act permitting an emergency circulation. Our Act contains 967 words, while that part of your Act which deals with emergency circulation contains 3,730 words. This is not a very reliable manner in which to compare the respective value of two Acts of legislation. But in this case it may be said that the difference in words fairly represents the difference

in ease with which the additional franchise of an emergency circulation may be given to a few large banks with branches as compared with thousands of individual banks.

Returning to the ordinary currency, we find that with the exception of the gold coin and paper money directly based on gold coin, all of the vast remainder is currency created for some reason not concerned with the benefit of the business of banking, or, what should be the same thing, of trade generally. We see fiat money rendered necessary by the war, but not since funded or redeemed; depreciated silver, or its paper representative, kept at a gold equivalent by the good credit of the United States, a sort of half metallic—half fiat money; and bank issues, so-called, which are merely indirect evidences of Government debt. Now, if these species of currency provide all that is necessary in the interest of trade, no one, in the interest of the banks alone, has the right to complain. But it is possible that under modern credit conditions the peculiar functions which in most countries are performed by the credit-notes of a bank should be performed by a mass of currency which, if not constant in volume, is so nearly so that its non-use at once represents to any holder except the Treasury the loss of so much interest? Let us consider, once more, the functions of the credit-notes of a bank. There are still people who imagine that a natural and quite desirable condition would be one where whenever money is given as the purchase price of a commodity that money should either be gold, or a silver equivalent, or that if paper is used the paper should be actually represented by an equivalent amount of gold or silver practically ear-marked for the purpose. As we know, there is not sufficient coin in the world to make this even remotely possible. As we also know, the trade of this country is rendered possible only by cheques, drafts, clearing-houses, paper money of the various kinds we have referred to, and various other substitutes for money which in the main shift the credits and debits between different individuals and institutions. We shall never return to the simpler conditions of the use of money which closely followed barter, and I presume we do not wish to. But if we do not this nation must manage somehow to achieve its large volume of trading, done so largely by credit instruments, in such a manner as to avoid panics and such violent changes in prices

as cause widespread ruin. Let us be frank with one another and admit that you have been quite unable to do this. You have achieved the huge volume of trade; you have achieved the necessary transportation—most difficult of problems usually; but you apparently cannot manage the shifting of credits without panic. You constantly fall short of currency, and the fear of this accentuates the difficulty so much that sometimes those who have the power to do so lock all the currency up and leave the country without the necessary financial machinery with which to carry on business.

There are countries in the old world where the fluctuations in the volume of trade and in the price of commodities and securities from one year to another, and from one part of the year to another, are not so violent as to require much elasticity in the currency. But in the United States, where the volume of trade and the price of commodities and securities vary largely from one period of contraction through a period of expansion to the next period of contraction, and from one year to another, and from one part of a year to another, and from day to day, there should be in addition to the constantly varying total of cheques, drafts, and such credit instruments, with which most of our trade is done, a species of credit-note issuable by banks which can be varied in total quantity in proportion as the total quantity of trade done with such instruments of credit varies. And there is the additional reason for such a credit-note that whenever, because of panic or any form of distrust, the ordinary currency is hoarded or additional cash is being held by banks as reserves, some legal credit currency becomes more than ever necessary. No one at this late day will advocate the issue of such a credit currency unless it is perfectly safe. I know the history of paper money in the United States from colonial times down to date well enough to know that in suggesting credit paper money the long and dismal history of disastrous experiment in this country comes up as a sort of bogey. I was engaged in business early enough to remember the last of the state-bank issues which in the case of solvent banks passed at a discount if geographically distant, and at a larger discount if the bank laws of the particular State in which the note was issued were supposed to favour loose habits or undue risk in banking. But it is to the last

degree unfair to judge any of the recent suggestions for an asset currency by ante bellum experiences. A currency issued to the extent of the paid-up capital or less, as you have generally proposed; secured as your National bank notes now are, by a first lien on the assets of the bank including the double liability, but not by anything specially deposited or ear-marked; further secured by an insurance fund; and bearing a fair rate of interest if not paid by the liquidator immediately after suspension, is perfectly safe in any country where daily redemption can and will surely be effected. The whole difficulty in carrying out such a plan in this country lies in the fact that you have become used to a system which requires practically no redemption, and with so many thousands of banks you do not quite know how, or you are not quite willing to take the trouble to establish the complicated machinery necessary to effect such daily redemption.

That the issues proposed are credit-notes, while National bank notes are not, and that they must be subjected to actual daily redemption, while National bank notes need not, should never be lost sight of for a moment. One of the greatest elements of safety in such issues lies in the fact that having performed the credit service required they will immediately come back for redemption. But some of you will ask how with thousands of banks, can you prevent a bank in Kansas arranging with a bank in Oregon to circulate each other's notes, so that the volume kept out would be increased by the geographical distance on the one hand, while the difficulty and expense of returning for redemption would be made unbearable on the other? Clearly, by organization you could prevent this, but it is rendered so troublesome by the many thousands of banks that you doubtless will not do so. But again, it seems that the obstacle to flexibility in your currency also lies in your thousands of individual banks.

Central Bank.

There are practically only two directions in which those who desire reform are looking for aid. These may be summarized as follows:—

(*a*) Plans differing in detail, but looking to the creation of a credit-note system of bank currency based upon the assets, somewhat similar to that in use in Canada, although much more restricted in the extent of the powers or franchise to be granted.

(*b*) Plans differing in detail, but looking to the creation of one central bank, which alone is to have the franchise of issuing credit notes.

In the most comprehensive form which I have seen, the proposal to form a central bank sets out the following features:—*

1. A capital of, say, $100,000,000 to be invested in Government Bonds.

2. The shareholders to be National banks, and, possibly, also, State banks.

3. To issue its notes, say, for $300,000,000, in exchange for gold provided by the banks who become shareholders.

4. To be authorized to issue additional notes up to say $600,000,000, provided a gold reserve of at least 33 1-3 per cent. of the whole issue is maintained.

5. The central bank to use its powers of lending merely by re-discounting for or lending to the other banks of the country.

6. The shareholders to be represented by a board of directors elected by territorial districts.

7. The Government also to be represented in the directorate by officers of the Treasury Department.

Among the merits claimed for such a central bank are the following:—

(*a*) It would remove the nuisance of the Treasury, and cause the balances of the Federal Government to be available as lending capital when necessary.

(*b*) It would not, like the two banks of the United States, be a rival to other banks, because the latter would be shareholders. This, however, would require that every bank created hereafter should have the same right to proportionate shares as those taking shares at the inception.

(*c*) It would probably prevent such a lack of currency at any time as to cause panic.

* Hon. George E. Roberts: "The Need of a Central Bank."—*Annals Am. Acad. Pol. and Soc. Science*, March, 1908.

(*d*) It would, to some extent, create that necessary cohesion among banks in time of trouble which is now almost absent.

(*e*) It would steady credit so much as to set the pace of confidence among the smaller banks.

(*f*) It is alleged that because of the territorial directorate, and notwithstanding the presence of Government officials on the board, there would be no reason to fear that politics might control the working of the bank.

Among the defects of such a system which have been, or might be urged, are the following:—

(*a*) The possible customers of the central bank would consist of eight or ten thousand banks, who would also be the shareholders. It would be necessary to satisfy these customers that the favours of the central bank were distributed fairly, and especially fairly as to geographical sections of the country. This would make it necessary for the central bank to know the credit status of each bank, and of each customer of each bank, or at least of those customers whose paper might be offered for re-discount or who might require a loan. It is quite true that the number of banks out of the eight or ten thousand requiring re-discounts or loans might be very small relatively, but that does not alter the quantity of knowledge necessary, as it would be impossible to tell in advance who might at any moment apply for such accommodation. And if for the soundest reason a re-discount or loan were refused, discontent would be apt to result. No central bank elsewhere in the world is called upon to perform such a task, and I fear it is impossible of satisfactory performance.

(*b*) It would also be absolutely necessary to keep the customers permanently convinced that no political influence could be used to favour one customer as compared with another, or one district as compared with another. Now, it might be quite possible to keep political influence out of the management of the bank, although surely no one can feel certain as to this, but can we believe that in a country where party strife is so keen, the customers of the bank and the people will remain continuously convinced of this fact?

(*c*) An argument against such a central bank, which perhaps will appeal more strongly to a Canadian than to an Amer-

ican banker, is that as the central bank may not have any customers except banks, it can do nothing to change the state of affairs now existing, because of which a large borrower may have either to keep a discount account with a great number of banks, or to sell his paper to sometimes as many as fifty or sixty banks, or even more, through the medium of a note-broker. This clumsy manner of borrowing not only prevents that close intimacy between a sound borrower and his banker which, lasting over a series of years, tends so much to create firmly cemented credit relations, but it undeniably has often caused perfectly solvent American merchants or manufacturers to fail—a thing which in other countries would be regarded as reflecting on the banks of such countries.

(*d*) Another argument which would appeal to Canadian banks and to all other bankers engaged in financing the export and import business of the United States, is that the central bank, having no customers except the banks of the United States, could do little to build up the foreign exchange business, which is still done mainly by bankers other than the National and State banks. Now that you own the Philippines and the Hawaiian Islands, now that your foreign trade is increasing so rapidly and, should your tariff be lowered, will increase much more on the import side, surely the need of great banks in the United States, capable of establishing large banking connections with other countries, and capable of doing a large international business themselves, is obvious.

(*e*) When all this is said, however, there is little doubt but that a central bank, if wisely administered, would be an improvement upon the present conditions, but if the temper of your people will permit such a departure from the present system, there are surely better plans for the permanent reform of your banking. A recent writer, who is strongly opposed to centralization of power as opposed to "states rights," puts his main objection to a central bank in the following significant words: * "In my judgment our currency, like our other evils, is to be remedied by greater freedom and greater distribution of choice and discretion, rather than by a greater centralization or unequal distribution of power. It is a fair question to ask,

* George H. Earle, Jr.: "A Central Bank as a Menace to Liberty."—*Annals Am. Acad. Pol. and Soc. Science*, March, 1908.

therefore, whether conceding, as I do, that there is not sufficient elasticity of the currency, I can suggest no remedy, but would prefer present evils to those resulting from the creation of too centralized a power; and the answer, to my mind, is obvious. The true remedy must be found, not in placing our dependence upon the discretion of any one, but of every one,—that is, again, upon liberty, rather than upon power and restraint." Without regard to whether this is in the abstract a wise view, or not, I think we must admit that it is distinctly the American view, and those who have carefully read the history of early American banking will recognize that each attempt to depart from it has aroused most passionate opposition.

So far as my own opinion is concerned, I do not find that it has changed materially since I had the honour of addressing the New York State Bankers' Association in 1895. I felt doubtful then as to the probability of the necessary reform being acceptable to the existing bankers, and I am not much more hopeful now. But if the people are willing to create a central bank, with the monopoly of banking which would be involved, they should be much more willing to create a series of large banks which could perform every good feature of centralized banking, and still preserve that chief safeguard of the people in industrial matters, viz., competition. And even if the people and the bankers are not willing, I need not, I suppose, on that account hesitate to state what I happen to regard as a more reasonable solution than can be found in any other direction.

In order that reform may be permanent and effective the new species of bank should be able to create:

(1) A sound credit currency with effective daily redemption.

(2) A distribution of capital available for lending, so that it shall not be idle and congested in one locality and scarce or non-existent and proportionately in another.

(3) A condition where the gold and other cash reserves of the country may be made more effective and doubtless be minimized in quantity.

(4) Where in time of trouble the capital of the country may be mobile and capable of being centralized when necessary.

(5) Where there may be banks capable of doing the entire

lending business of your merchants and manufacturers, except where these are unusually large, when they could be divided by arrangement between two or three banks.

(6) Where a great international banking business may be created and you may do justice to your over-sea possessions, to the great ports of export and import, to your mercantile marine, and to your position among the great nations of the earth.

This state of things can, I think, only be brought about by your permitting the creation of banks in the United States similar to the banks of other countries. As I have tried to show, the mere creation of one central bank will not change the defective character of the eight or ten thousand other banks. The suggestion I ventured to make in 1895,* and which I give below unaltered, was based upon the National Banking System and the ten per cent. tax on State bank issues being allowed to remain as they are, and the new powers to be added to those enjoyed by a National bank or to be enjoyed by banks under State or Federal charters as indicated below:

"Any bank with a paid-up capital of $1,000,000 or over, to be allowed to issue notes, say, to the extent of 75 per cent. of the paid-up capital, secured only by being a prior lien on the assets of the bank, including the double liability of stockholders, and by an insurance fund of say five per cent., and to be free from the ten per cent. tax. Such banks to be allowed to establish branches within the State in which the head office is situated. If the franchise is granted by a State, the Federal issues, and to hold the insurance fund. I do not enter upon the question of what the minimum paid-up capital should be in the case of banks desiring to avail of such bank issues, but not to open branches. I hope, however, it might be practicable to make it as high as $500,000."

In the light of later experience I should think that banks having power to establish branches throughout the whole of the United States and its over-sea possessions should have a larger minimum capital than $5,000,000. This, of course, purposes asset-currency, and I am aware of the arguments which have been made against it. But no effective argument has been

* B. E. Walker: Address New York State Bankers' Association, 1895.

made other than the difficulty of applying it to thousands of relatively small banks, and effecting that daily redemption which is indispensable. That it can safely be applied to all individual banks with a capital of $500,000 and over, and to all banks with branches with a capital of $1,000,000 and over, I have no doubt whatever. That it is extremely desirable in this country if it can be made safe, I am quite certain.

But quite as important as the asset-currency, to my mind, is the branch system. If you make your laws so that it is merely permissive, surely the branch system will not come into being in an important degree unless it is right in principle. If it is right in principle, should the particular interests of ten thousand or more individual banks stand in the way of a great public good?

However frank I may have been, I have not dared to strike such a high note of criticism as many of your own bankers, remembering that I am a foreigner, but if what I have said offends, I beg you to forgive, and to believe that I have no ends to serve, and have spoken out of a full heart that which to me seems to be the thing I hope we are all seeking—the truth.

I thank you most heartily for your patience in listening to my rather lengthy paper.

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EDITORIAL NOTES

The Dean of Bank Presidents.

Since the publication of the last issue of the JOURNAL, Mr. Thomas E. Kenny, the President of the Royal Bank of Canada for the past 38 years, has joined the great majority. When the Merchants Bank of Halifax was incorporated, thirty-nine years ago, few, if any, of its founders dreamed that the growth and prosperity of the then recently Confederated Provinces would ever make it expedient to seek another name for the bantling bank they had created, and to find, in the wider fields of enterprise north and west of Nova Scotia, employment for the savings of the thrifty

race of shipbuilders, merchants, lumbermen and fishermen, who have made the men of the Maritime Provinces respected for their ability and energy in every pursuit and profession known to the Dominion of Canada.

The late Thomas Edward Kenny was the eldest son of the Hon. Sir Edward Kenny, and was born in Halifax in 1833. He was educated at Stoneyhurst College, England; and St. Gervais College, Liege, Belgium. His business career commenced in the firm of T. & E. Kenny. He, later, became President of the Acadia Sugar Refining Co. His banking connection was altogether confined to the Merchants Bank of Halifax, now known as the Royal Bank of Canada. He also occupied a seat in the House of Commons for several years; and in public life displayed conspicuous ability when business questions were debated by the House.

Mr. Kenny, at the time of his death, was almost the sole survivor of the school of bank directors who, in the seventies, virtually controlled the institutions in which they were largely interested, and, while their excessive zeal was not always pleasing to the trained officers they employed as managers, the strong sense of duty exhibited by them was notable, and compares quite favorably with that of the bank directors of our own times.

Coming Visitors.

The members of the National Monetary Commission of the United States, who have been visiting Europe for the purpose of obtaining information with reference to the monetary and banking systems of the leading commercial nations, and to examine the methods in use for the collection and distribution of public revenues in all the leading countries, announce their intention of visiting Canada at an early date upon the same mission. Although some American critics have not hesitated to belittle Senator Aldrich and his fellow Commissioners, even going to the length of saying that, as they seemed incapable of learning anything at home, the trip abroad might do them much good, they may rely upon being given every opportunity, when in Canada, to study our banking and currency system; and we earnestly hope that Mr. Aldrich and his colleagues may find something in Canada to admire, if not to imitate. Concerted action with a view to se-

curing an improved monetary and banking system is admitted to be necessary; and it seems a pity that any cruel critic of this commission should question the wisdom of its appointment. Under any circumstances, they will be well received by their banking brethren of this country, and every avenue of information will be cheerfully opened up to them.

Gold.

The tabulated statements issued to date seem to show that the production of gold for the year 1908 was considerably in advance of that of the preceding year. The world's total output of gold is said to have been 427,000,000, as compared with 410,000,000 in 1907. The largest increase was attributed to Africa, which was reported to have produced gold valued at 165,000,000, an increase exceeding 13,300,000 over that of 1907. The next largest increase was claimed by the United States, which produced gold valued at 96,000,000, as compared with 90,000,000 in the preceding year.

The silver production of the United States in 1908 was valued at 27,000,000 as compared with 37,000,000; but the decrease of 9,000,000 will be more than offset by the tremendous output of the world famous Cobalt mines of Canada.

Underground Wires.

The JOURNAL has frequently called attention, on behalf of the metropolis of Canada, to the absolute apathy and indifference of its representatives to the able report of Mr. Robert A. Ross and his engineering colleagues upon the necessity of burying the wires which now disfigure the streets of Montreal, and imperil life and property. A further argument in favour of this movement was furnished at a recent fire in the leading jewelery establishment of the Dominion. The daily papers called attention to the fact that the upper parts of the building were encompassed by a network of wires—telephone, telegraph and electric—strung upon poles carrying thousands upon thousands of volts, and that these wires left no room for the firemen to conduct their operations. Valuable time was lost in the cutting of these wires, by reason of the difficulty in reaching them, and meanwhile the fire was

making headway. As usual, the Montreal firemen, willing, active and heroic workers, conquered the flames in spite of the serious handicap of the disturbing wires. Since the fire, the newspapers, singularly silent about the power of the city of Montreal to construct conduits and compel all companies to bury their wires in them, have had little to say about this important matter. The interest of the banks in every movement having for its object the prevention of the loss of property by fire is apparent to everybody, and every effort should be made to compel all parties concerned to act upon the strong recommendations contained in the report of Mr. Ross.

Another strong reason for resorting without further delay to underground wiring in Montreal was furnished by the severe storm of last week, when thousands of telephones were rendered useless. What some of the subscribers would have liked to say to the manager of the company, it is not prudent to print.

Cheques and that sort of thing.

The *Insurance Chronicle* of Montreal has directed attention to a subject, which, although perhaps trifling, is well worthy of consideration by bankers when they are not busy with problems of greater moment. The matter in question is that of the appearance of cheques, and even the Institute of Bankers in England is suggesting reform in the shape of greater uniformity in the size, shape and general appearance of the orders to pay drawn by individuals and corporations upon their bankers. Sir Felix Schuster complains that cheques vary in size from that of a visiting card to a newspaper, and that occasionally the advertising matter thereon is so conspicuous that the bank officials find it difficult to discover the intention of the "drawer." The *Bankers' Magazine,* as an illustration of the part played by the modern cheque in advertising the business or occupation of the drawer, instances a cheque the most prominent feature of which was an announcement of the wholesome qualities of the sausages made by the drawer of the cheque. Another cheque is said to have been illuminated with pictures of the places of business of the drawers—and their stables.

While it may not be regarded as a very important subject to occupy the attention of serious-minded bankers, the London

Clearing House is said to have been asked to make an effort to bring about the adoption of cheques that would be more business-like in character even if less artistic. The subject is one not altogether uninteresting to Canadian bankers and their customers.

What our American neighbours think of the silver fields of Canada may be gathered from their leading financial papers. The consensus of opinion seems to be that the Cobalt district is the most wonderfully mineralized region ever discovered. It seems to be established beyond doubt that the pure metal is found in every small fissure; and the country rock on every side is saturated with silver, frequently for several feet. At present, nobody seems disposed to even guess at the depth or width of this remarkable region.

Cobalt.

Cobalt is said to have produced in 1908 ore yielding over 25,000,000 ounces of silver, with a net revenue approaching $10,000,000. The celebrated copper camp of Butte produces 30,000 tons of ore every two days, but, if the statements of those who should know may be accepted, its profit for the year 1908 from all its mines will not amount to $8,000,000.

Whatever mischief may have been worked by wild-cat prospectors in the early days of the discovery of this wealth of silver, there is now good ground for the belief that Cobalt will, in years to come, be known as a great mining city.

During the expected visit of the National Monetary Commission, its members will have a good opportunity to compare the work of Canadian Bank Inspectors with that of the United States Bank Examiners. The problem of effective bank examination and supervision has been discussed so frequently, that those interested in financial affairs in Canada and in the United States are fairly well informed as to the merits of the systems adopted by both countries. It has been admitted again and again that the American bank examiner can do very little to prevent the violations of law which frequently lead to ruin. He discovers the wrong *after* it has been committed; and if bank officials and directors con-

Bank Inspection.

spire to conceal fraudulent acts from the examiner, he is powerless to prevent the consequent breakdown.

Although the Canadian branch bank system may admit of opportunities for fraud on a large scale, it at least provides a guarantee against the gross mismanagement of small institutions, to which the United States system is liable. The branches of our large banks have their affairs under the effective supervision of the central officials of the bank; and officers with their special knowledge can probably go more thoroughly into the branch working than any outside official could do. The relation of the branch to the head office of a Canadian bank provides a valuable mass of information continuously; and the inspector starts his work in a much better position, not merely to discover past evil but to prevent mischief, than a United States bank examiner.

In view of the coming visit of the members of the National Monetary Commission appointed by the United States Government to examine the Canadian banking system, we do not hesitate to reiterate our belief in its superiority on this point, and in some others.

Special Note Issue.

In compliance with the request of a Winnipeg reader of the JOURNAL we publish in this issue thereof the amending Act authorizing the chartered banks to issue additional currency during the months of October, November, December and January.

The provision in the Act that "during the usual season of moving the crops," an additional issue of notes could be made may have been a prudent move on the part of the Government; but, although the harvest exceeded that of any previous year, the banks were able, almost without exception, to supply the currency required without availing themselves of the special right.

J. T. P. K.

TABLE OF CLEARINGS.

Comparative Totals of Bank Clearings for the past five years at the cities of Montreal, Toronto, Winnipeg, Halifax, Hamilton, St. John, Vancouver, Victoria, Quebec, Ottawa, London, Edmonton and Calgary.

	1908	1907	1906	1905	1904
Montreal	$1,467,316	$1,555,729	$1,533,597	$1,324,314	$1,065,067
Toronto	1,166,902	1,220,905	1,219,125	1,047,491	842,097
Winnipeg	614,111	599,667	504,585	369,868	294,601
Halifax	90,222	93,587	91,837	89,252	90,116
Hamilton	72,329	88,104	78,480	68,386	59,003
St. John	66,435	66,150	60,042	52,836	51,423
Vancouver	183,083	191,734	132,606	88,460	74,030
Victoria	55,356	55,330	45,615	36,890	33,070
Quebec	111,812	107,543	91,618	85 795	79,844
Ottawa	154,367	152,969	135,327	120,892	106,638
London	56,875	65,760	57,863	50,430	45,552
Edmonton	38,496				
Calgary	64,810				

(000 omitted.)

WHOLESALE DEALERS AND MANUFACTURERS.

By W. F. Chipman, B.C.L.

SINCE what is now Sec. 88 of the Bank Act was last discussed in the pages of this Journal, it has, as everyone knows, been subjected to a remodelling. What used to be sub-sec. 1 of Sec. 74, has now become sub-sec. 3 of Sec. 88; while sub-sec. 2 of the former has been divided into sub-sec. 1 and 2 of 88; sub-sec. 3 of the former into sub-sections 5 and 6 of 88; and a new sub-section inserted as No. 4. The whole now reads as follows:—

"*Loans to Wholesale Dealers or Manufacturers.*—The bank may lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock and the products thereof, upon the security of such products, or of such live stock or dead stock and the products thereof.

"2. The bank may allow the goods, wares and merchandise covered by such security to be removed and other goods, wares and merchandise, such as mentioned in the last preceding sub-section to be substituted therefor, if the goods, wares and merchandise so substituted are of substantially the same character and of substantially the same value as, or of less value than, those for which they have been so substituted; and the goods, wares and merchandise so substituted shall be covered by such security as if originally covered thereby.

"3. The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture.

"4. Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of said goods, wares and merchandise, stock or products.

"5. The security may be taken in the form set forth in schedule C to this Act, or to the like effect.

"6. The bank shall, by virtue of such security, acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt. 53 V., c. 31, s. 74; 63-64 V., c. 26, s. 17."

At the same time changes have been made in other parts of the Bank Act relating to this section; and it is here intended to make a few remarks upon the section in the light of these and of other developments, with the object of seeing whether it is possible to distinguish in every case between the "products" of paragraph 1 and the "manufactures" of paragraph 3.

It must be recognized in the first place that the form of the section has put paragraph 3 entirely by itself. It has no share as has the first paragraph in the provisions of paragraph 2. The wholesale manufacturer of any goods, wares and merchandise, covered by security could not substitute other goods, wares and merchandise for these, to be covered by the same security. The reason is, as has been pointed out by other commentators, that there is not the same occasion for continuous substitution of materials in the case of the wholesale manufacturer as there is in the case of the purchaser, shipper or dealer. The goods are less transitory. They are brought into the premises not to be immediately disposed of, but firstly to be changed as the result of work. It is presumably on account of this difference that the law has discriminated between the two cases.

It thus becomes important to draw, if possible, a strict line between wholesale manufacturers and wholesale purchasers, shippers and dealers. At first sight this would not seem difficult, as we have in the Bank Act a definition, of a sort, of the word "manufacturer." But that definition, as we shall see in a moment is not free from ambiguity; and includes a phrase which brings it so close to the terms of sub-section 1 as to need some examination.

It will, however, first of all be worth while to see if any legal definition can be given to the word wholesale, for, though that word is common to both sub-sections and has nothing to do with a discussion of the difference between them, it meets us

on the threshold, and may as well be considered. No definition of it is given in the Act, although the making of one was considered by the Government and by Parliament. The matter was left to the common sense and discretion of bank officials, who consequently must give the bank the benefit of the doubt when any arises.

The fact is that while a fairly absolute meaning may be attached to the word "retail," the word "wholesale" is a relative term. It comprises, in the rough, those sales which are not retail. That is to say its main determinant is the quality of the purchaser. In the case of wholesale, the purchaser is not a consumer, but one who buys to sell again. And the quality of the purchaser is to be considered with regard, not to his general status, but to the particular transaction. A retail dealer may thus be a wholesaler with regard to part of his stock if he sell it to those who are buying not to consume, but to sell again. Not that one such sale will constitute the seller a wholesaler, but that habitual sales of that kind will do so.

In the same way a retailer may become a wholesaler by making himself part of an intermediary step between his purchase of goods and his sale of them to the consumer. Thus in an American case [1] where certain retail liquor dealers organized themselves under the style of a protective union, and signed articles pledging themselves to purchase beer through a union of brewers in another State, thereby saving themselves two dollars a barrel, the purchases being made through a common secretary and treasurer, and then divided: it was held that they thus became wholesale dealers within the meaning of a statute requiring licenses from such persons.

In like manner commission merchants who, at the request of foreign correspondents, occasionally purchase liquor in quantity, and take charge of shipping it, and duly charge the costs and their commissions in their books to the account of such correspondents, or draw upon them for the full amount of the purchase price with costs and commissions, are wholesale dealers,[2] This point deserves some close attention as it turns directly upon the position of the middleman. There are occasions where he may be a wholesale dealer, and occasions where he may be a re-

[1] U. S. vs. Kallstrom, 30 Feb., 184.
[2] 11 K. B., 212.

tail dealer. The distinction would appear to be based on the matter of agency. Does the commission merchant preserve his identity as a middleman, or does he allow it to be merged in that of the retail dealer? If the former, then he is still a wholesale trader. If therefore he purchase the goods in his own name, and acquire a title to them, so that his vendor can charge him only and not the final buyer; or if he assume obligations on the part of his vendor, of delivery or the like, so as to have his identity merged in that of the latter, he is to all intents a wholesale dealer. A factor would thus be a wholesaler, while a broker, not buying or selling in his own name, or having any intermediary possession, would not have that separate standing, at a stage before the consumer was reached, which is the gist of the term wholesale.

Mere quantity has nothing to do with the question, except where special statutes may have ruled that the sale of quantities over and above a certain amount shall be considered as evidence of the quality of a wholesale transaction, if it be habitual.

Let us revert, then, to the distinction between manufacturers on the one hand and wholesale purchasers, shippers or dealers on the other as qualified by the words of section 88, paragraphs 3 and 1. We are here brought to the much discussed case of The Molsons Bank vs. Beaudry.[1] There, the main point in dispute was as to the meaning of the phrase "a product of the forest." The judge of first instance in this case declared that the lumber in issue in this case, which had been turned into beams and rough deal boards, was not the product of the forest, to wit, logs; and that if such lumber were held to be the product of the forest, then all products of wood, no matter through what process of manufacture they had passed, would be subject to loans by banks in the name of wholesale purchasers, which, he declared, would be a direct contravention of the spirit and letter of the section.

The case was appealed; Counsel for the bank pointing out that, if the words of the act were to be taken in their narrowest signification, it is difficult to understand what could be classed as a product of the forest, unless it were standing timber and per-

[1] Quinn vs. Dimond, 72, Feb., 993.

haps windfalls. They also called attention to the fact that the moment the process of conversion into a commercial commodity begins, the element of the application of labour becomes a factor; and that the judge's view practically denied the character of product of the forest to lumber because it is adapted to commercial use by the hand of man. The same reasoning, it was contended, would limit banks to lending to the wholesale purchasers or shippers of unthreshed grain and hay, saw-logs and crude ore, a practical absurdity. It may be added that the same reasoning would make logs themselves the product, not of the forest, but of the axe and the saw.

In the appellate Court, the majority were spoken for by the Chief Justice, Sir Alexandre Lacoste, and upheld the judgment. Hall, J., dissented on this point, and Wurtele, J., did not pass upon it. It seems maintainable from the want of unanimity, from the state of the law at the time and from the state of the law at present, that this judgment is yet subject to criticism.

In the first place, Sir Alexandre Lacoste grounds his conclusion upon the assertion that the forest does not produce beams and boards. It produces, he says, only trees, and logs, which are pieces of trees, primary products like grain and wheat, the primary products of the earth. This seems to be open to three criticisms. The forest does not produce beams and boards, but then the product of the forest and what the forest produces are two different things. In English, at all events, a product is more than the offspring of natural causes; it is the result, in part at least, of human work. It is defined in the Standard Dictionary as "anything obtained as a result of some operation or work, or by generation, growth, labour, chemical reaction, study or skill." When we are discussing merchantable things, it is here submitted that the factors of human operation or work are necessary precursors of a "product." It was laid down in an English case [1] in interpreting the phrase "corn, grass or other product whatsoever which shall be growing on any part of the estate" that "product" did not extend to trees and shrubs, but to objects "to which the process of becoming ripe, and being cut, gathered, made, and laid up when ripe, was incidental."

[1] Clark vs. Gaskarth, 8 Taunton, 431.

And in an American case [4] it was declared that standing, growing, trees are not "forest products." We do not get a forest product until we have, at the very least, a log.

A log, too, cannot properly be called "part of a tree." It is more. It is a part of a tree which has been created as a part by human intention and work. Not only so, but to create it, the tree had to be destroyed as a tree. One thing cannot be part of another thing, if to precede the production of the first thing we must have the destruction of the second. The connexion between the two is entirely broken. The log is in a totally different category from the tree. We must not confuse origin with agency. To say that a thing is the product of the forest is not to say that it is produced by the forest. A product implies an active producer as well as a passive object from which to produce; and the product of the forest implies not only a forest to begin with but an active producer of something therefrom. That active producer is man. Not only so but since the forest and its trees are identical, the product of the forest must be something else than the trees, or than part of the trees. If that something else do not come from nature, it must come from man.

Another consideration which shows the unreasonableness of speaking of trees as products of the forest, and of logs as parts of trees, is the fact that trees are real estate. Banks of course cannot lend upon real estate. They can, by an enactment which came into being shortly after the institution of the case that we are discussing, now section 84 of the Bank Act, lend money upon the security of standing timber, and the rights or licenses held by persons to cut or remove such timber. But the fact that this power is quite distinct from and outside the provisions of section 88, as well as the adjective "standing" prefixed to the word timber, is clear evidence of the legal difference between standing timber and the products of the forest. The products of the forest whatever they may be, must be movable.

Then, too, as before, we must see that trees and grain are also in different categories. Grain is not, until man has stepped in not only to plant it, but also to reap it, thresh it, and separate it from its chaff. In that state it is no more a product of the earth, if by product one means simply outcome, than is the log

[4] Fletcher vs. Alcona, 72 Mich., 18.

a product of the tree. Therefore, even if outcome and product were the same thing, instead of being quite contrary, the analogy, which was the basis of the judgment in this case, is mistaken.

We are led, therefore, to the conclusion that in order that there should be a product there must be first some human work; and that the inquiry is restricted to the extent of work implied by the phrase. For presumably, on the other hand, we have to distinguish between a product and that which is manufactured. Let us see then, if such a distinction is possible.

Section 2 (i) of the Act defines for us the word "Manufacturer." It "includes manufacturers of logs, timber or lumber, malsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetable, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise."

The first point to be considered is the meaning of logs, timber and lumber. The American and English Encyclopædia of Law defines logs as "the stems or trunks of trees cut into convenient lengths for the purpose of being afterwards manufactured into lumber of various lengths." Timber it declares to be a term of variable meaning according to the connexion in which it is used, or the occupation of the person making use of it, but it is declared ordinarily to include large sticks squared or capable of being squared for building houses or vessels, and to exclude all that is not material for building or manufacturing purposes. Lumber is timber still further sawed and split. The Standard Dictionary defines timber as wood of suitable size and quality for building and allied purposes, cut, squared, sawed, or otherwise prepared for use, especially the larger forms of lumber adapted for beams, scantlings, etc.; while lumber is timber sawed into merchantable form, especially boards. The new English Dictionary, again, defines lumber as timber sawn into rough planks or otherwise roughly prepared for the market.

Strictly speaking, therefore, logs, timber and lumber are, in that order, three different stages, timber being a preparation of logs, and lumber of timber. And ideally it might be said that while the three are alike in being successive developments, they are also alike in the fact that not until we reach the last stage have we the true beginnings of merchantable commodities.

Not until logs have become lumber could anyone subject them to a process befitting them for a particular civilized use. Until this intention has had a chance to come into play, the wood has not ceased to be raw material. Applying these considerations to the Beaudry case, it might be remarked that wood does not go beyond the point of being a product of the forest until it has ceased to be raw material and is on the way to becoming a merchantable commodity. There we might say, is the dividing line between the amount of work which is production and the amount which is manufacture. Up to that line there will be necessitated a continuous substitution of wood under process of production. Up to that point there is a reasonable and legitimate basis for continuous substitution of other security for the product so obtained. It would therefore be reasonable to suppose that all wood that has not yet ceased to be raw material is subject to paragraphs 1 and 2 of section 88.

This line of argument would seem to get support from the endeavour to distinguish those paragraphs in all particulars from paragraph 3; and to establish it that there really is a dividing line between production and manufacture. For what are we to understand by wholesale manufacturers of logs, timber or lumber? Are we to mean manufacturers of trees into logs, into timber, into lumber? Or are we to mean manufacturers of logs, timber and lumber into specialized and merchantable wood, into graduated boards, shingles, laths, staves, hoops, pulp and paper, etc.? If paragraphs 1 and 3 are not to overlap, one might say surely the latter. Otherwise, if a manufacturer of a log is one who turns a tree into a log, then he is precisely the same person as what is understood in the Beaudry case as a dealer in the product of the forest. There is no more original stage short of the ownership of standing timber or of a license to cut it, and this clearly less than the stage contemplated by section 88's first paragraph. The phrase "manufacturer of logs" must mean therefore, it might seem, something more than what is meant by the strictest interpretation of "dealer in the product of the forest." But it cannot mean that more without meaning more at the same time than a manufacturer of trees into timber or even into lumber. It cannot mean that more without meaning one who uses logs, timber or lumber for manufacture of

something more specialized. If so, then timber and lumber are not manufactures. If they are not manufactures, they must be products.

Or, taking the words "goods, wares and merchandise" by themselves, it might be thought that these words imply objects which need only the mediation of a retail trader to become useful to the public; that they cannot include such unfinished, characterless and unpurposive things as logs, timber and lumber; that they must mean the things into which logs, timber and lumber can be manufactured, and must leave logs, timber dividing line between the two paragraphs.

Unfortunately, we are dealing not with logic, but with the Bank Act. The Bank Act gives us a definition of goods, wares and merchandise which quite upsets this reasoning. Section 2 (f) declares that "goods, wares and merchandise" includes, in addition to the things usually understood thereby, "timber,deals, boards, staves, saw-logs and other lumber, petroleum, crude oil, and all agricultural produce and other articles of commerce."

Here, then, we have all our distinctions wiped out; we have timber and saw-logs classed with lumber; we have no line of demarcation between raw material and finished material, we have classed with manufactures, precisely what the Beaudry case admitted to be products of the forest. For, if "goods, wares and merchandise" includes logs, then a manufacturer of logs means one who turns trees into logs. But the dealer in the product of the forest, whatever he might be in theory, is in fact just this person.

We therefore come to the conclusion that paragraph 1 must be interpreted by itself, and without reference to paragraph 3, the expressions of which cannot be used to limit the meaning of the word "product." Indeed, if we are at all to consider the two paragraphs in the light of each other, the effect will be rather to extend than to limit the possible meaning of the word "product." If saw-logs, timber and lumber are in the same category, when the person handling them is a manufacturer, there is no good reason why they should not be in the same category when the person handling them is a dealer. It does not seem that the judgment in the Beaudry case will stand criticism on the grounds that were urged in support of it. Its result would seem

to be sound only if it separated products absolutely from manufactures. We seem to be driven to the opinion that they cannot be separated under the Act as it stands.

It remains for bankers to distinguish as best they can, in the matter of logs, timber and lumber, between dealers and manufacturers; that is to say, as things are, between the lumber merchant in his capacity of dealer and the same man in his capacity of manufacturer. Seeing that the object may be the same in both cases we can only admit that the practical banker will have a task of some difficulty, in which, save by way of warning, the considerations of this article can give him no help.

MODES OF CARRYING CASH RESERVES.

IN comparing the position of the Canadian banks with the record of a year ago the most striking change is seen to be in the cash reserves. On 31st October the items of the quick assets, when condensed, made the following comparison with 1907:—

October 31st.	1908.	1907.
Specie and legals...	$ 88,218,250	$ 73,927,693
Net foreign bank balances. ..	47,336,662	6,639,382
Foreign call loans...	70,239,118	47,946,737
	$205,793,030	$128,513,812

In the twelve months the total liabilities of the banks increased from $776,682,398 to $791,972,683, or $15,290,285; while their immediately available resources, contained under the above headings, increased $77,279,218. Nearly all the important banks have the same story to tell in the reports they are publishing—decrease in mercantile discounts, increase in interest bearing and other deposits, swollen cash reserves. This state of affairs is recognized to be but the natural effect of the panic and depression. Our last experience with it was in the years that followed the panic of 1893. Of the total of $205,793,030, reserve held on 31st October last, no less a sum than $117,575,780 consisted of obligations of the two great international money markets—London and New York; and the whole of the remainder was composed in such manner as to be available without in the least disturbing Canadian borrowers or the home markets in Canada. In this respect our banks will stand comparison with any in the world.

It is well known that the banks in the United States carry a large part of their reserve money in the shape of balances with approved reserve agents in New York city. The New York city

banks are obliged by law to carry a minimum reserve of 25 per cent. in specie and legals. As this 25 per cent. cannot be used, according to the law, the New York banks in practice make the Stock Exchange the custodian of their fluctuating balances. When a bank has surplus funds it puts them out at call in Wall Street when there is a demand big enough to take them. Though these funds, so put out, figure as loans in the bank statements they are, nevertheless, a part of the bank's reserves. They are there to be drawn upon whenever it suffers a loss of deposits or whenever its regular borrowing customers make sudden demand for extraordinary accommodation. The bank situation is hardly regarded as being satisfactory to all parties unless the surplus above the 25 per cent. requirement is of moderate dimensions—say fifteen or twenty millions. A large surplus such as has existed since last spring is regarded as an abnormality. It meant first that the banks themselves were scared and wished to carry large reserves in cash, and afterwards it meant that there was no market for the money in New York city even at interest rates of 1 per cent. per annum and less. As one of the functions of a cash reserve is to receive spare monies, to hold them against an emergency, and to yield them back again on the development of a normal or extraordinary demand for credits, and as the New York banks in normal times carry but twenty millions or so in cash in excess of the 25 per cent. which they may not touch, it is thus clear that a goodly part of their real reserve consists of call loans to Wall Street. And, being the reserve of the New York city banks, these loans are therefore the reserve also for the interior or country banks of the United States. Such a system means, of course, that in every emergency or every spell of extra demand, that liquidation is forced upon the Stock Exchange borrowers; and the fluctuations in security prices must necessarily be greater than would be the case if the New York banks followed the practice of employing a part of their surplus funds or a part of their real reserve money in London, Paris, or some other of the big international markets.

The big French banks habitually employ a part of their surplus funds in London, Berlin and other markets. In the closing months of 1908, while preparing for the Russian loan, the Bank of France was able to draw the necessary gold from London by virtue of these French holdings of British credits and bills.

In Berlin, Amsterdam and Vienna too, the banks are accustomed to put a fair part of temporary surpluses, when they have them, into the purchase of bills of exchange mostly domiciled at London. Thus when cash threatens to get redundant the holdings of foreign bills of exchange will be added to, the balance will run up. When occasion for the use of the funds at home presents itself, these bills are allowed to run off. They thus fill an important part as reserves outside of the home business. Through the sale or collection of the foreign bills of exchange the cash can be replenished whenever desired without bothering home borrowers or disturbing the home financial markets.

As regards manner of carrying its cash reserves, London has some peculiarities. If the balance sheet of any important London bank be examined, its reserve will be found to consist of cash on hand and at Bank of England, loans at call and short notice, securities and bills of exchange. The cash will be part gold and part Bank of England notes. Both the notes and balances at the Bank depend for their virtue on the bank's reserve of gold. Hence one reason for the anxious weekly study of the Bank of England's position. One of these items—securities—is not subject to much fluctuation. The English banks acquired a large proportion of the consols, which they hold as reserve, a number of years ago at considerably higher prices. With the fall in the quotations they have been obliged to make successive appropriations out of profits to write down the book values of their securities.

In the banking practice of the United Kingdom the idea is quite common that a bank's rest or reserve fund should be a real reserve, something entirely apart from the assets employed in the bank's general business. Thus a bank with a paid-up capital of £1,000,000 and a rest of £800,000, will have the latter specially invested in gilt edged securities, largely consols, and kept apart. At the end of a given year or half year, if an addition of £50,000 is to be made to the rest, additional securities to that amount will be purchased and added to the batch ear marked as belonging to the rest.

In Canada a bank's rest has not that significance. An institution reporting capital of $4,000,000 and rest of $2,500,000

is not expected to have the $2,500,000 on hand in any particular shape. The common acceptance of the term "rest" is that it corresponds to the term "surplus" as used by the banks in the United States. It merely represents an accumulation or aggregation of profits or capital payments of the stockholders of the bank. It may be used in the bank's general business and has no relation to the cash reserves at all.

Taking the securities, or investments as they are styled, of the United Kingdom banks, as they are generally handled, it can hardly be said that it is their function to receive temporary surpluses, to hold them a while and then yield them back again when wanted. They are rather of the nature of permanent investments which are being steadily added to as the banks' liabilities and business grow larger. That also is the way the banks in Canada handle their securities. The aggregate amount does not fluctuate greatly. During the period in 1906 and 1907, in which money was tight, scarcely any addition was made to the holdings of securities, because the ordinary discounts cried out for every dollar of the banks' available reserves.

It is the other items of the British banks' quick assets—cash and balances at Bank of England, loans at call and short notice, bills of exchange—that altogether play the part of reserve fund to receive temporary surpluses and yield them back again. Quite probably the loans at call and the bills of exchange are mostly used for this purpose. As the cash and balance in the bank return no revenue, the general policy would naturally be to keep both at a fixed level. When they get beyond the certain point the surplus is put out on the market either in call and short loans or in purchase of bills. And when the total of cash and bank balance fell below the fixed point or threatened to fall below it, the funds would be taken off the market.

Thus in the case of emergency or extraordinary demand the London banks, like those in New York, would look first to their home money market for the funds they needed. Of course, it is to be remembered that among the bills of exchange in their portfolios would be a certain proportion which would have to be financed or provided for at maturity by markets other than London. But in any case, no sudden general movement of the banks

to strengthen themselves in cash could take place without having an immediate effect on the home money market, and on borrowers in London and in other parts of the United Kingdom. There is another point to remember in this connection. It is that year in and year out the great London banking institutions are in effect discounting and making advances on bills of exchange drawn at commercial points practically all over the world at rates based on the current Bank of England rate. So, therefore, a sudden raising of the bank rate would have a tendency to check this discounting. If the rise was of consequence enough to stop the discounting of bills at some important centres the mere ceasing to make these daily advances, or a curtailment in the making of them, would quickly result in the piling up of cash resources in London. Great Britain and France, being important creditor nations, with very heavy investments in the other parts of the world, can fortify themselves at will by drawing home their own capital. This can always be done through a rise in the interest rate at London or Paris.

In reference to the Canadian method of carrying reserves it has been mentioned that the large sum of $205,793,030 (as at 31st October last) was available without the necessity of disturbing Canadian borrowers at all. This comprises the bulk of our cash reserves. Though some important banks confine their call loans on securities to Montreal and Toronto, the general practice amongst the large institutions is to use London and New York for that purpose. It is significant that several of the large banks that do not use the foreign call loan markets for reserve purposes have latterly followed the practice of carrying very heavy balances in Dominion notes. This, in fact, bears out Sir Edward Clouston's defence a year ago, of the practice of loaning at call abroad. He said that the alternative to carrying foreign call loans was to carry in Canada the cash represented by them. That is exactly what the banks referred to are doing. They doubtless regard their Canadian call loans as being perfectly safe and to some extent available for an emergency. At the same time they do not wish to depend too entirely upon them; hence the large carrying of legals. The holding of Dominion notes by the Canadian banks has shown a very impressive increase in the last two years. The following table shows the

strengthening comparatively in specie and Dominion notes since the end of 1903:—

	Specie.	Dominion Notes.	Total.
December, 31, 1903	$ 16,101,019	$30,941,367	$47,042,386
March 31, 1904	16,805,962	30,422,417	47,228,379
June 30, 1904	17,156,933	31,578,329	48,735,262
September 30, 1904	17,609,537	35,984,556	53,594,093
December 31, 1904	17,617,529	38,436,983	56,054,512
March 31, 1905	17,276,859	38,043,257	55,320,116
June 30, 1905	17,190,791	36,595,713	53,786,504
September 30, 1905	19,467,981	38,734,128	58,202,109
December 31, 1905	19,649,545	38,055,620	57,705,165
March 31, 1906	20,329,036	35,916,888	56,245,924
June 30, 1906	20,108,117	37,609,454	57,717,571
September 30, 1906	21,509,991	38,850,182	60,360,173
December 31, 1906	23,752,750	44,266,154	68,018,904
March 31, 1907	22,772,815	42,631,694	65,404,509
June 30, 1907	24,101,603	45,554,182	69,655,785
September 30, 1907	24,097,487	48,713,519	72,811,006
December 31, 1907	25,119,474	49,963,860	75,083,334
March 31, 1908	23,673,770	48,764,540	72,438,310
June 30, 1908	23,887,895	50,804,725	74,692,620
September 30, 1908	25,091,788	62,742,264	87,834,052
October 31, 1908	24,757,174	63,461,076	88,218,250

In October, 1906, there was a special strengthening up on account of the Ontario Bank developments. But, although the extra amounts of gold and legals were accumulated as a precautionary move against the possible spread of uneasiness amongst bank depositors in general, the holdings did not decrease materially after the danger from the Ontario failure had passed. The banks continued to carry as normal reserves an amount of cash equal to what they had got together for the special purpose.

The next important addition to the cash took place in 1907. That was due, as everybody understands, to the liquidation following the panic. Then the third important addition occurred in the last half of 1908, and was caused by the foreign balances becoming unwieldly.

It is also noteworthy that the respective proportions of specie and Dominion notes have undergone a change in the five year period reviewed. On 31st December, 1903, the specie comprised 34 per cent. of the cash, while Dominion notes comprised 66 per cent. On 31st October, 1908, the specie had fallen to 28 per cent., while Dominion notes had risen to 72 per cent. of the whole.

With the great increase in the past five years of $32,519,709, or over 100 per cent. in the bank holdings of Dominion notes, the Dominion Treasury has assumed a far more important position in relation to the reserves of the banks than it formerly occupied. It was remarked in dealing with the London banks, that by virtue of the joint stock bank holdings of Bank of England notes, and of their ownership of balances in its ledgers, the Bank of England is the custodian of a very considerable part of the cash reserves of the other joint stock banks. The joint stock banks can rest easy as to the gold in the issue department of the bank earmarked against its notes outstanding. But they have no control over the policy of the bank as to the amount of gold which it shall carry against its deposits.

To a limited extent the Dominion Treasury is coming to occupy a position, relative to the banking reserve of Canada, similar to that occupied by the Bank of England relative to the banking reserve of the United Kingdom. The Canadian Treasury has received the greater part of its holding of $59,585,268 in specie from the chartered banks. Allowing for the £400,000 of guaranteed sterling debentures which the Dominion Note Act says may be held in the reserve, and for the reserve of $5,979,000 carried against Dominion Government and Post Office Savings Bank balances, there remained $55,552,514 in hard cash against the Government's issues of demand notes.

These amounted to $77,356,883 on the 31st October, and of that total the chartered banks held $63,461,076, leaving $13,-895,807 in the hands of the general public.

The specie in the Treasury would permit the Government, without borrowing, to redeem all its notes as presented down to an outstanding of $30,000,000. When that point was reached, there would remain $8,195,631 in specie against the $30,000,000 of notes outstanding. If further redemptions were demanded then the Government would have to borrow, since the Dominion Note Act requires the carrying of a reserve of 25 per cent. against the issues up to $30,000,000. But it is difficult to conceive of a crisis or emergency that would result in a contraction of the Dominion note circulation below $30,000,000. The requirement of the general public for small bills for circulating medium could not well be less than twelve or thirteen millions, and the banks could not well get along, under any circumstances,

with less than $20,000,000 in Dominion notes, large and small. They would need to use considerable ingenuity to comply with that clause in the Bank Act, which requires them to hold 40 per cent. of their cash in the form of Dominion notes.

So the Dominion notes held by the Canadian banks can, for all practical purposes, be regarded as equal to the Bank of England notes held by the British banks in their power to produce gold on demand. There is one important difference. The Bank of England has no power to lessen or modify its obligations as to the specie or security which it must hold against its circulation. The Dominion Government has power to modify the provisions of the Dominion Note Act relating to the specie reserve. Should Parliament be so minded there is nothing to prevent its declaring that a 25 per cent. reserve, or a 10 per cent. reserve on the outstanding notes shall be legal. It is to be hoped, however, that no effort will be made to change the present stipulation.

These bank holdings of specie and Dominion notes do not fluctuate broadly with the accumulation or decrease of the temporary surpluses. It is the call loans and bank balances abroad that receive the surpluses and yield them up again. These items show wide fluctuations during the course of the year. Taking the net foreign bank balances along with the call loans outside Canada, the total was smallest in 1908 on 31st January, when it was $56,647,070. Each month it fluctuated and reached the highest point, up to that date, on 31st October—$117,575,780.

In 1907 the lowest point was $50,820,563 on 31st December, the highest $66,842,437 on 31st August.

With the reserves kept in this manner the danger of disturbance to the home financial markets and the home trade and industry is reduced to a minimum. Everybody may go ahead with his business secure in the knowledge that the banks are looking to strong foreign institutions and borrowers for the means of providing cash for any emergency that might occur in Canada.

H. M. P. Eckardt.

THE INDUSTRIAL FUTURE OF CANADA.

Address by B. E. WALKER, at the 140th Annual Banquet of the Chamber of Commerce of the State of New York, 19th November, 1908.

AS a Canadian, grateful for what I learned during several years spent in New York in the service of the Bank of which I am now the President, I thank the Chamber of Commerce of the State of New York, among the members of which I recognize many old friends, for the graceful compliment they are paying to Canada, and I am also deeply sensible of the very great honour conferred upon myself in being asked to speak for my country on this occasion.

Just about one hundred years ago you had a population of seven million people. To-day in Canada we have a population of seven million people, and yet the first settlements in Nova Scotia and Quebec were made practically at the same time as the first settlements in Massachusetts, New York and Virginia. It is true that nature, except perhaps in New England, presented a much sterner front of opposition to the settler in Canada than in this country, and it is also true that the British races coming to America were bent on securing immediate results from trade and agriculture while the French were dreaming of vast empire although doing little to secure or to people it; but the chief reason for the extraordinary difference in the population of the two countries does not lie mainly in these facts, vital as they were. The direct result was that when French Canada passed into the possession of the British there were about forty British colonists in North America to one French colonist, and almost all the British colonists were in that part which eventually became the United States. The important fact, however, was the forming of one nation out of the thirteen colonies, the first great act of federation in the newer parts of the world. The thirteen separated units with their rivalries, even animosities, might have rebelled successfully against Great Britain, but they would have given a very different account of themselves had it not been for the great act of federation. In twenty years by the

Louisiana purchase you had stretched to the Pacific, this and another event in Canada ending all hope of French Empire in America, and by the middle of the last century you had secured the entire area out of which the present forty-six States have been created. Your new nation had for its leaders in public opinion some of the greatest statesmen America has ever produced, and in that generation, when the cry of the French Revolution for liberty and equality was ringing through many countries, you opened the doors of a great section of the Temperate Zone to the distressed peoples of Europe.

Immigration may have seemed slow to the new republic at first, but by 1830 there had set in that extraordinary tide of humanity moving steadily in ever-increasing numbers to the United States which, however you may now value it, is not likely to stop.

Turning to my own country, eighty years after you had commenced your experiment there were five separate struggling colonies east of Lake Superior, each a complete Government in itself. The only attempt at union had been made by Upper and Lower Canada, but this had not been successful. There were on the Pacific coast two colonies, mere remote and somewhat forlorn outposts of the British Empire and not in touch with the eastern colonies. Between, that is from Lake Superior to the coast, lay what has been called the Great Lone Land, those mighty stretches of prairie and mountain which are now attracting the notice of the world, but which were at this time held absolutely beyond the control of the settled Provinces by the Hudson Bay Company.

And if the political difficulties in the way of union were great the geographical difficulties seemed greater. These were the days when you were anxiously examining the reports of the engineers, surveyors and naturalists who had searched your plains and mountains for a route for your first transcontinental railroad. How were we to imagine a connection between Upper Canada and the prairies through what we then thought was a hopeless wilderness of rock north of Lake Superior, and how cross, beyond the prairies, that Province which in derision had been described as a sea of mountains?

But the whole land from the Atlantic to the Pacific was British, and we did not even then lack men with vision who

dreamed of a British nation to be made out of what had been saved in North America. As early as 1789 that intrepid opponent of the Hudson Bay Company, Alexander Mackenzie, had made his canoe journey from Montreal to Lake Athabaska, and from there down to Arctic waters and back up the great river which bears his name, and in 1793, after travels in the Peace River country, he had gone on over the mountains and down the rivers of British Columbia until, reaching the waters of the Pacific, he painted on a rock that, to us, immortal sentence: "Alexander Mackenzie from Canada by land, the twenty-second of July, one thousand seven hundred and ninety-three." When in his retirement Sir Alexander Mackenzie wrote his book, he told England to build a trade route through British North America to the Pacific and to take care of her trade on the North Pacific, otherwise Russia and the United States would own the whole coast.

And there were not wanting many others, great citizens such as Joseph Howe, who told his sceptical fellow-countrymen in Nova Scotia in the fifties that some of them would hear the whistle of the locomotive in the Rocky Mountains, and would go to the Pacific from Halifax in five or six days and would some day trade with China and Japan; or travellers like Professor Hind, who also in the fifties presented to eastern eyes the vision of a great city on the Red River where Winnipeg now stands, and who saw in imagination the white cloud of the locomotive as he looked down from the hills upon the beautiful valley of the Qu'Appelle.

There must naturally have been those, also, who thought the racial difficulties quite as great as the political and geographical difficulties. Could we make a British nation with so large an admixture of people of French origin? The Canadians of British descent, many of whom have since learned the French history of their own country from your Parkman, did not know how passionately the Canadian of French descent loves Canada, how proud he is of its wonderfully romantic past, or how thoroughly his thoughtful leaders have recognized that, being cut off forever from France, with which he is now scarcely even in harmony, he confides absolutely in his rights under the British crown for that full measure of civil and religious liberty necessary to his present happiness and his future prosperity. When

we considered the other Canadians we found the Highlander in Nova Scotia, in Upper Canada and in isolated spots in the fur-trading west, clinging as he does still in Cape Breton and on the St. Lawrence in Ontario to his Gaelic speech and his Highland customs, until we say that we are more Highland in some parts of Canada than in the hills of Scotland; and the other Canadian Scotchmen who were everywhere, and who even now in Ontario need not lose the breadth of accent for want of a fellow Scot to crack a joke with; and the English Canadians also everywhere, particularly in far British Columbia and Vancouver Island; and the Irish and Welsh in lesser numbers; and some of German and other descent but all strongly British in sentiment; and foremost of all the United Empire Loyalists, the descendants of the men who gave up everything for their King and, leaving your land, sought homes in the unbroken forests of Upper Canada and Nova Scotia. Now that their praises have been sung by an American historian I need not hesitate to mention them with honour merely because they differed from the other great-hearted colonists who also took their lives in their hands for what they deemed the best cause.

We had no dark-skinned people or subject races, except the few Indians whom we understood and whose claims we have always respected. After all, this was not bad material out of which to build a nation, and whatever the future might have in store for them, it was a vain imagination to think that they could ever be anything but British. We had watched you keenly and surely often with an envious eye, recognizing the enormous value of your federation, but concluding that in some details we, if we could do it all, would do it differently. And so the Fathers met and the plan for the federation of Canada inside the British Empire came about in 1867. We concluded to give certain more or less definite but restricted powers to the Provinces, placing the residuum of power in the federal government, and thus reversing your system. In this way Banking, to which I shall refer, is controlled entirely by the Dominion Government. The British North American Provinces then existing, except Newfoundland, all came into the Confederation within a few years, and in 1870, but not until then, we at last secured the great prairies of the west from the Hudson Bay Company. Under the agreement made when British Columbia

come into Confederation we were to build a transcontinental railway connecting the Atlantic with the Pacific, and some of you know the trials and tribulations we experienced before the great enterprise was finished in 1886. Nearly twenty years had elapsed after the Act of Confederation before we were ready to ask the foreigner to come and spy out the land of the West and, if it seemed good, to stay. Settlement was slow at first, but the sons of Ontario farmers and many from the Maritime Provinces began to take up the land, and tales of its wonderful fertility began to receive a tardy acceptance from a critical world. Some of us ventured to say before 1890 that the first great movement of the land seeker into that country would take place in the United States. It seemed that they alone would understand as quickly as our Eastern Canadians the value of the country (and as it now turns out they understand it much better); that at the moment when the pressure of eighty or ninety millions of people caused the price of farm lands to go beyond the possibilities of ownership for the men without capital, and the American farmer, used to owning his land, must in many cases be only a tenant or a renter, they, the American people of the West, would begin to go into our country. All the forces of nature were on our side, but nature takes her own time. Nature, however, was greatly aided by the high intelligence and great energy of the Hon. Mr. Sifton, one of your guests to-night, who as Minister of the Interior put the facts before your Western people in several campaigns of advertising. The movement has now begun, and into the extensive areas represented by our unoccupied lands this great colonizing force will continue to press its way as long as any cheap lands are left. The movement from Great Britain and from European and Asiatic countries is also fully under way, and we have already in a small degree some of the immigration problems which trouble you.

If those here to-night are to understand the responsibilities which fall upon the population already in the country by the coming of the immigrants we must multiply the number of our people by twelve or thirteen in order to make a comparison with your nation of eighty or ninety millions. If we do this we find that our immigration of over 250,000 in the fiscal year 1907-8 is equal in your case to an immigration of about 3,000,000 in one year. No proportionate responsibility, therefore, has ever

fallen upon the United States, especially if we consider the exacting demands of the modern immigrant as compared with the land seeker of thirty or forty years ago who trekked with a paririe schooner hundreds of miles into the unknown and did not expect much in the way of immediate comfort. The greatest difficulty in all new settlements is of course transportation and we are building railroads at the rate of a thousand or more miles per annum, equal, relatively to population, to twelve or thirteen thousand miles per annum in the United States, but hardly sufficient for our needs, when considered in respect to the great areas being put under settlement. In the last ten years our railroad mileage has increased from 16,584 in 1898 to 22,452 in 1907. All railroad building in the West is being done by three great companies, and in a few years we shall doubtless have three completely equipped transcontinental railroad systems, truly a remarkable accomplishment for seven or eight million people. Next to transportation, adequate banking is one of the most important requisites. The number of bank branches in Canada is 1,900, in comparison with about 640 ten years ago. Multiplied by twelve this would mean 22,800 banks in the United States, and the fact that we are so abundantly supplied should check somewhat the silly statement, frequently made in the Western States, to the effect that small communities are better served by individual and local banks than by the branches of large banks having their head offices in the monetary centres. The growth in railroads and banking will suggest without further detail how great has been the strain of providing new towns, new schools, churches, teachers, doctors, lawyers, trading people of all classes, the early stages of manufacturing and all the other accessories of civilization. The history of the settlement of your great West shows in a large way what we are doing in a smaller degree.

Statistics are wearying things, especially after dinner, and in any event there is not time enough at my disposal in which to enter upon the various phases of industrialism which have lately shown surprising growth in Canada, arising largely out of this Western settlement. I can, however, indicate this growth in a few words by the figures of our foreign trade. In 1899 our imports were $149,346,000, our exports $150,321,000 and our total foreign trade $299,667,000. In 1908 our imports were $341,931,000, our exports $273,062,000 and our total foreign trade

$614,993,000, a growth of over 100 per cent. in ten years. For the first five years of the period in question our exports moderately exceeded our imports. For the last five our imports largely exceed our exports. You will understand better than some Europeans that we cannot build railroads and in a general way put a new country in a condition fit for settlement without mortgaging the future. And this may be a good time to say a few words without offence, I hope, regarding the relations of the United States to our foreign trade and also to the foreign buying of our securities by which the difference between our imports and our exports must be met. In the last ten years we have bought from Great Britain to the extent of $599,047,000, from the United States $1,430,852,000 and from other countries $271,436,000, in all $2,301,335,000. In the same time we have sold to Great Britain to the extent of $1,174,385,000, to the United States $747,296,000 and to other countries $226,545,000, in all $2,148,226,000. It used to be thought that while nations settle their accounts with bills of exchange and other forms of money, in reality they only exchange goods with each other; and also that if one nation bought from another very largely in excess of its power to pay in goods it must look to the nation it was buying from so largely to buy the securities which must be sold to pay the balance. But apparently we have changed all that. Great Britain takes our products far beyond our purchases from her, and buys our securities as well. You sell us 60 per cent. of our imports, but buy only 35 per cent. of our exports and rarely buy our securities. It is true that we are improving our purchases from England, and that you are improving your purchases from us and even occasionally taking an interest in our securities, but I invite your deepest, most broad-minded and wisest consideration of these most striking figures, and I ask you whether you think it is likely that trading relations so one-sided can continue forever. Beyond a peradventure if you do not open your doors a little more liberally to us, so that we can more nearly pay you in goods instead of always drawing on London for the purchase price of what she has bought from us in order to pay you, you will leave us no alternative but to keep up our tariff walls until we can create at home almost every manufactured thing you sell us on the one hand, while on the other we seek trade preferably with any nation which takes pay in goods so as to lessen our payment of actual money to you.

Believe me, my dear friends, I am bold enough to say these things because some one should say them and because you of all bodies in the United States are the one to which they should be said.

I have already spoken quite too long and I shall trespass further on your patience only for a few minutes. I was particularly requested to say something regarding our banking system, but I have so recently spoken to the American Bankers Association regarding yours that I hesitate to refer to the subject again, further than to add to my remarks at Denver regarding what Alexander Hamilton had tried to do in banking for the United States, the fact that when you threw his system overboard we picked it up and based our first charters largely on the charter of the first United States Bank; and that we have clung to this, building it up to suit our purposes, until we have a system which, whether suitable for other countries or not, admirably serves our purposes both as to the individual and as to the nation as a whole. The difference between the two countries stated in the smallest compass is that instead of about 17,000 individual banks we have 30 banks with 1,900 branches, and these banks being few in number, and each large in capital and importance, they are trusted to manage their own reserves, to issue credit notes, to hold the deposits of the Government—one being selected as the chief banker for all important Government business—and to open branches even in foreign countries, thus developing not only a local but a great international force in the finances and trade of the country.

And now let me set out in a few words some of the reasons why we have faith in the future of Canada. We have a country about the same size as the United States proper, that is without any of its outside possessions. It used to be thought that for all practical purposes much of it was too frigid to be worth anything, just as thirty years ago it used to be thought, even at Washington, that one-third of the United States was too arid or too bad otherwise for settlement. Neither the one statement nor the other is true. What is true is that the world is being startled by cereals grown further and further north, which actually seem to improve in quality the further north you go. The prairie provinces as yet produce only about 200 million bushels of cereals, and I am not going to be so foolish as to estimate what they will yield in the future, but clearly the quantity will

eventually be enormous. Once we should have said that our timber was inexhaustible, but now we know that that is true of no country in the world. But this much can be said that, if we are willing to learn the lessons in forestry now being taught in our Universities and in our forestry journals and by the experience of our lumbermen, there is no reason why we should not have most extensive forested areas from which great national wealth can be drawn for all time. We own more fishing waters than any other nation, although too many of our friends wish to fish in them. We have iron, nickel, copper and coal enough to rank with the greatest nations in this respect, and while we are only about the eighth nation in gold, we begin to look important in silver with the Cobalt camp turning out about $1,000,000 a month. The intensive farming in Ontario has resulted in our becoming one of the great dairy countries and our importance in breeding horses, cattle and other domestic animals is well known. In manufacturing, while our figures are trifling compared with yours, we are making great strides, partly as the result of the naturally enlarged markets in Canada, but also because we are beginning to seek a share, in some branches of manufactures, in those markets which are open to the world's competition. No one can at present estimate the extent in horse power or the value in money of our water powers, which probably in these respects exceed those of any other nation in the world. We have a land most of which receives at least the average rainfall, with a summer climate almost everywhere which would please the most fastidious and a winter climate which to the native-born at least is a thing of beauty and a joy forever. We share with you the great lakes, and we have at least twelve or fifteen great river systems any of which should be remarkable among the river systems of the world, besides unnumbered smaller lakes and rivers. Finally we are a contented people, with a fine birth-rate, with hardly any illiteracy, loving law and order and insisting on it in every mining camp and on the rudest frontier line. We hope to build up a nation as free as any in the world, with our own peculiar institutions, with a share of some kind in the British Empire, and with relations with your great country which should through the coming ages be of benefit to both nations materially, intellectually and ethically.

IMPRESSIONS OF PRINCE RUPERT.

IT IS only natural that the proposed terminus of a great transcontinental railway should be the object of general attention. As a matter of fact, I believe that not only in all parts of Canada and the United States, but even across the Pacific, in Australia and New Zealand, a lively interest has already for a considerable period been taken in the prospects and possibilities of Prince Rupert. But even in Vancouver itself, one hears the most contradictory reports, and Vancouver is above all the place where one might expect to gain some knowledge of the actual facts, seeing that it is the one city which is in regular and constant communication with the G. T. P. terminus.

Under these circumstances I hope that a plain and unvarnished report of what is actually to be seen at Prince Rupert, may not be without some general interest. Accompanied by my son, I left Vancouver by the Princess May about the middle of September. The actual time at which she should have sailed was 11 p.m. on September 9th, but as a large quantity of cargo had to be taken on board, we did not really leave till 4 a.m. on the following day, which was the cause of our witnessing an extraordinary and almost unique sight. The fact that Vancouver Island lies right along the main land coast for a distance of approximately 300 miles, naturally produces a tremendous tide in any place where the island approaches close to the mainland. Such is the case with the strait named Seymour Narrows, which we reached about 12.30 p.m. on the first morning of our voyage. If it had not been for the delay caused by taking in cargo we should have passed through these narrows before the full tide. As it was, we reached this spot just when the tide was in its full strength. Most of the coasting steamers under these circumstances lie outside till the full fury of the tide is abated. But the Princess May is proud of her speed, and it was resolved to make the attempt to get through. The consequence was an experience such as I never hope to pass through again. For at least two hours and a half we were racing at full speed against the racing and raging tide. When we looked at the water at the

steamer's side we seemed to be going at least 15 knots an hour, when we looked at the shore, we seemed "no painful inch to gain." During the interval named we may have occasionally advanced and occasionally receded a foot or two, but at the end of the period we were in exactly the same position as when we started two and a half hours before. For the whole of this time our situation was certainly somewhat alarming. On the one side and about two hundred yards away was a rocky shore, past which the tide was racing in mad fury. In mid channel and not more than twenty yards away was a sunken reef, over which a mass of water was seething. This was the spot where about a year and a half ago a man-of-war was lost with all hands. To keep the nose of our ship straight to the tide must have been an extremely difficult process; but unless it had been done during the whole one hundred and fifty minutes we must almost inevitably have been driven sideways over the reef. In that case I do not see what chance any of us could have had; and most of us were thankful on the tide abating a little to find that we were at last able to leave this very dangerous spot.

The whole of the voyage from Vancouver to Prince Rupert is one of extreme interest and great beauty. I suppose nowhere else in the world is there such a stretch of havened seas. The actual distance is about 500 miles; and with the exception of two places where for three hours and one hour respectively, the passage is open to the ocean to westwards, we were running through land-locked waters, consisting mainly of lofty wooded islands on the one side, and on the other of an equally wooded and even more lofty and precipitous mainland. There is very little sign of habitation along these shores. Occasionally we stopped at an Indian village, the most interesting feature observable being the totem poles, whose strange and grotesque carvings are a fitting accompaniment of the weird and majestic scenery that surrounds them.

We reached Prince Rupert at 4 a.m. on Saturday morning, almost exactly 48 hours after we had started. In Vancouver they have a good deal to say about the weather prevalent at Prince Rupert, and certainly the reports current are not flattering. The kind of description usually given may be illustrated by a story told me by an Oxford man, which is characteristic of

what is generally believed. "Piles," he said, "had been driven over night at Prince Rupert preparatory to making a foundation for a local branch of the Bank of Montreal. But during the night the wind arose and the rain fell in torrents, and when the morning came, and the workmen returned to resume their work, there were no piles left, for a deluge had swept them away." When I mildly pointed out to him that the Bank of Montreal had not started or intended to start a branch at Prince Rupert, he admitted that the story must be apocryphal. I must confess, however, that when we landed I began for the time being to appreciate the moral of the anecdote. We had had two fairly fine days on our voyage, the last being practically cloudless, but as we got into Prince Rupert a tremendous wind arose, accompanied by violent rain, and this storm lasted all the morning till one o'clock. After that it cleared up, and for the remainder of our stay (that is to say for a period of about five days), there was no more rain to speak of. Certainly, Prince Rupert treated us well in the matter of weather, and from the very careful and painstaking reports which are published in the weekly paper (of which I shall have more to say anon), I am inclined to think that at this time of year Prince Rupert may reasonably expect three fine days a week, a very much greater allowance than is made at Vancouver. In Vancouver, indeed, I think there is a slight though unconscious tendency to belittle the site of the Grand Trunk terminus, and I certainly do not personally think that this manifestation of local jealousy is at all warranted by the facts of the case. Doubtless, Prince Rupert will in time become a city of considerable importance, in fact, the most important city of Northern British Columbia. But to suppose that the growth of this part of the province will injure Vancouver is absurd. The broader and wiser view is surely this: that Vancouver must inevitably benefit by any and every extension that may be made to the wealth and population of Northern British Columbia. To a certain extent, no doubt, some of the Yukon trade which at present finds it outlet in Vancouver will deviate to Prince Rupert, because it is two days nearer to the north. But on the other hand it is perfectly certain that with the growth of Prince Rupert, a large and increasing trade must spring up between the two cities; and the benefits to be derived therefrom will far

outweigh any slight loss in the local northern trade which Vancouver may suffer from the foundation of Prince Rupert. It is a great pity that such petty jealousies should be manifested by cities whose interests are not really or necessarily inimical. A city that is always looking out for occasions to belittle a neighbour will almost certainly at other times be divided against itself, and a most salutary example of the contrary effect is afforded by Seattle, whose phenomenal rise and growth must largely be attributed to the fact that its citizens have been willing to work together shoulder to shoulder for the common weal.

Broadly speaking (and apart from the climate) I should say that the site chosen for the future city of Prince Rupert is a good one. The city will apparently extend along the shore for six or seven miles; for Mount Hays, a long and fairly lofty mountainous range stretches parallel with the shore at about a distance of a mile inland, and precludes the possibility of development further in that direction. Just about the centre of the harbour are the wharves erected by the G. T. P. Company, and in close proximity will be the actual terminus of the railway, and the Prince Rupert station. The harbour itself is undoubtedly a very fine one; indeed, I do not see how a better harbour could be desired in any part of the globe. In one respect indeed, it must certainly be allowed to be superior to Vancouver harbour, in that inasmuch as there is no lengthy island outside, there is no such formidable current as is produced at the First Narrows opposite Stanley Park in Vancouver. Otherwise both Prince Rupert and Vancouver may be classed amongst the great harbours of the world. Either is sufficiently large to accommodate all the shipping that could under any conceivable circumstances gather there; and each is sufficiently land-locked for all practical purposes. Each possesses deep water close to the shore. In all these respects they compare not unfavourably with Sydney, Rio, and Hobart, which are admittedly some of the world's finest harbours. Even so far as scenic attractions are concerned, Prince Rupert has great merit; and though I should not personally think it quite equal to any of the four just mentioned, still on a fine day the view is undeniably beautiful.

If a good deal is said about the Prince Rupert climate in Vancouver, even more is said about the lack of soil. Some

people even going so far as to declare that the town site is solid rock. Here again there has been a good deal of exaggeration. The Grand Trunk Pacific Inn at which we stayed (and which is by the way a very comfortable and well-situated hotel) had a trench dug just in front of it, at least 25 feet long, and the average depth of this trench was at least six feet, so I was told, but personally I should have been inclined to estimate the depth as eight feet. The soil in this particular locality seemed very good. In certain parts of the town site there is, I believe, an even greater depth of soil; but on the other hand and even I suppose the greater proportion the rock comes up to within two feet of the surface. Moreover, the surface all over the town site is at the present time exceedingly wet; but I should imagine that this could to a large extent be remedied by surface drainage.

The real and serious obstacle to the proper development of the city consists in the existence of (to use an Irishism) a chain of isolated hillocks, of which there are from half a dozen to a dozen running about a hundred to two hundred yards inland parallel with the shore. These hillocks are from 30 to 50 feet high, and are composed of solid rock with a very thin coating of soil. There is in particular one such hillock almost immediately opposite the present site of the Canadian Bank of Commerce, and about 100 yards from the wharf. This particular hillock, in fact, must in future, be almost in the centre of the business quarter. To suppose that these huge mounds can be allowed to remain if Prince Rupert becomes a city of any importance is quite unthinkable. Sooner or later the most obnoxious of them must inevitably be removed. Under the circumstances there are two courses open to the G. T. P. Railway. They can either put the town site on the market in its present state, or they can have it properly graded and at once remove any hillock which seriously interferes with the grade in the business quarter of the city. This will, no doubt, be a somewhat expensive operation; but the expense will not be one-tenth of that which sooner or later will have to be incurred in their removal. Moreover, under present conditions, it would be little short of madness to buy a lot or lots at Prince Rupert from the mere study of a map. However well it might look on paper, the situation of the particular lot purchased might for the reason mentioned be most undesirable.

Again, if the task of grading the town site be undertaken at once, and the cost posted and divided amongst all the lots placed on the market, the enhanced price of each individual lot will be comparatively trifling, and will be far out-balanced by the increased value which every lot will receive from the fact that it is part and parcel of a well-graded and well-organized town site. Even in the case of a private individual the latter would be the obvious course for any one desiring his own ultimate advantage as well as that of the public at large. But in the present case the town site does not belong to a private individual. It belongs to what may roughly be described as two large and wealthy corporations, namely, the Grand Trunk Pacific Railway and the British Columbia Government. The former own three-fourths, and the latter one-fourth of the town site. It is earnestly therefore to be hoped that the officials in whose hands the arrangements are finally placed will deal with the matter in a large, generous and fore-seeing spirit, and make the work of grading and levelling as thoroughly effective as the future prospects of a city with the situation of Prince Rupert must necessarily warrant. Here, more even than elsewhere, a "penny-wise policy" would be more than "pound foolish." And this fact is demonstratable not only from common sense, but from the actual experience of the Pacific Coast. I recently paid a visit to Seattle. At almost incredible expense a whole hill is being removed there in order to extend the space of level ground available for business purposes. The sight is one of the most remarkable I have ever witnessed. Ten-roomed houses are being lifted off the ground (presumably to be replaced at a different level), while an enormous mass of hill has also been washed away by the combined operation of excavation and hydraulic jets of water. Could this have been done at the outset I suppose millions of dollars would have been saved. But gigantic as is the task which the authorities of Seattle have now undertaken, it would be practically impossible if they had to deal with a solid sub-stratum of rock. With the example of Seattle staring them in the face, it is to be hoped that the Grand Trunk Pacific authorities will see the desirability of putting their town site into the best possible shape, before it is put on the market. Even in that case I should hardly advise any one to attempt to buy lots there without inspection on the spot, though doubtless in the case of a large and reputable corpora-

tion such action would not be quite so tainted with folly as is generally the case. A year ago a real estate agent at Regina assured me that more than half the transactions entered into in the case of real estate were effected without the purchaser seeing the property. From subsequent experience I am inclined to believe that his statement was very little, if at all, exaggerated. And yet the folly of such procedure is so obvious that it is almost incredible that people should be found willing to risk the loss of money which they can probably ill afford on the mere statements of persons, who are obviously prejudiced, and of whose character and reputation they know nothing. There is a mountain about four miles to the north of North Vancouver called Grouse Mountain. Its name is sufficient to indicate its natural inhabitants. Nevertheless, to my certain knowledge, two women were recently induced to buy acre blocks on the summit of this mountain under the belief that they were purchasing in an accessible part of North Vancouver. Yet the fraud so perpetrated was hardly greater than that by which it was endeavoured last summer to induce a gullible public to buy lots in the place called by the promoters East Prince Rupert. Similar schemes are still on the market, and my advice to those who have not seen the place would be not to expend a single cent in any locality other than the actual G. T. P. town site at Prince Rupert, and even then, not, if possible, to purchase without personal inspection. There are such genuine opportunities for the man who invests capital in real estate in the West after due personal inspection, that it is all the more desirable that the public should be warned of the folly and madness of purchasing lots in paper town sites.

In view of its future possibilities the present appearance of Prince Rupert is most interesting. There are now, roughly, about five hundred inhabitants; all of whom with the exception of a few of the leading Grand Trunk officials are mere tenants of sufferance, and are liable to have to move their habitations at a moment's notice. The consequences of this fact are evident in the character of the buildings. Even the Bank of Commerce is represented by nothing more than a portable building, which is, however, a structure quite imposing in appearance, being of large proportions and admirably fitted inside. Practically all the other buildings, with the exception of the two Grand Trunk Pacific hotels, and a house belonging to one of the G. T. P.

officials, are erected in anticipation of the fact that they are liable to sudden removal. They consist, therefore, either of small wooden shacks, tents, or a mixture of shack and tent, which gives a novel and not unpleasing appearance. Indeed, I should be inclined to say that the general appearance of the place is distinctly picturesque. At present a street runs up straight from the wharf for a distance of about two hundred yards. This street is planked, and a short trolley line runs down the middle. In this street is situated the Bank of Commerce and several of the principal stores. At its upper end another street goes off to the left, which soon however, terminates so far as buildings are concerned, but is extended by a plank sidewalk for a considerable distance, and after about half a mile you come to another small settlement where nearly all the inhabitants are living in tents. But the street on the right hand side, which goes off from the main street about fifty yards above the wharves, is in my opinion, the most interesting of all. Its genesis has a distinctly amusing side. The Grand Trunk officials (wisely in my opinion) were not at all anxious to encourage settlement before their town site was put on the market. They were not even anxious to welcome the ubiquitous newspaper. An enterprising editor, however, arrived, and finding certain difficulties placed in his way, conceived a plan of considerable ingenuity. The town site belonged to the Grand Trunk Pacific; but there were possibilities in the direction of a mineral claim. A sufficiently promising indication of minerals was discovered, the claim was made and duly allowed by the Provincial Government. From that moment the paper could be published without interference. Moreover, the possession of the mineral claim enabled the fortunate possessor to admit on sufferance persons whose presence the Grand Trunk Pacific could not at this stage be expected to welcome. The consequence is that in this neighbourhood quite a street has sprung up; nearly every building being a store, a miniature hotel, or a restaurant. The proud exception is the newspaper office, on whose wooden walls are inscribed the magic words "The Empire." Considering that Prince Rupert in its present stage is more of a hamlet than a city, the "Empire" newspaper is certainly a publication of which British journalism may be proud. It is published weekly, on excellent paper, and in excellent type. It is well written and well edited. It stands for the public interest, and I, for one, wish it success; though I

hope that the slightly hostile attitude with which it seems to regard the G. T. P. may be modified in course of time. Especially in one respect has it rendered admirable service to the community. One of the most noticeable features of life at Prince Rupert, a place which is of course at present really in little more than the railway camp stage, is the extraordinary sobriety prevalent. Even on a Saturday night, when one might expect to see some signs of the opposite tendency, it was a pleasure to notice the orderly character of the population, and the entire absence of any signs of intemperance. Much of the credit for this satisfactory state of things is undoubtedly due to Mr. John Houston, formerly Mayor of Nelson, and a Conservative member of the B. C. parliament, now editor of the Prince Rupert "Empire." Persons of orderly character have, as I have already said, had no difficulty in obtaining permission to locate on the mineral claim aforesaid. But the permission has been given with a stipulation attached. Each person has been warned that under no pretence is alcoholic liquor to be sold by the incomer. In every case, of course, the necessary promise has been readily given, and in the majority of cases faithfully kept. But there have been one or two exceptions, where after permission obtained preparations were evidently being made for the sale of alcohol. In such instances, the emphatic reminder that the place is a mineral claim, and that any attempt to serve liquor will immediately be followed by blasting operations on the actual spot, has proved marvellously effective.

It must, of course, be remembered that Prince Rupert is at present nothing more than a hamlet; and that the conditions which are now possible may not be possible when it attains, say, the 5,000 limit. Personally I hope that so long as sly grog selling can be kept out, no license will be granted; and that in any case no license will be granted against the wishes of the majority of the inhabitants. Prince Rupert is eminently a place where local option should be enforced, as there are no vested interests to complicate the situation. If on the other hand it should be determined after a local vote that a license is desirable, then I hope that the Scandinavian system (the principle of which is "no profits to the seller"), may be given a fair trial; and I am myself applying for a license with this object in view. If I am successful in my application, I propose to hand it over to a company with profits limited to 5 per cent., to operate in the same

manner and with the same objects as the Public House Trust Companies so successfully inaugurated in the Old Country by our present Governor-General.

Apart from its position as terminus of the Grand Trunk Pacific Railway, Prince Rupert is bound to become the natural centre of the northern fishing industry. This industry is at present only in its infancy, though there are already several salmon canneries at the mouth of the Skeena River. But even more important than the salmon industry will, I think, be the halibut industry. When the Grand Trunk Pacific is once in operation, there seems excellent reason for believing that a large trade will spring up in the carriage of halibut across the continent to be distributed not only amongst the great cities of Eastern America, but also in Liverpool, Manchester and London. Halibut abound in these northern waters, and they run to an enormous size. Mr. Moreton Frewen, the well-known authority on bi-metalism, was staying in the G. T. P. hotel when I was at Prince Rupert. He told us there was a very large halibut in the fishmonger's store, and advised us to go and see it. The fish we saw was certainly a gigantic one, but the fishmonger's wife, who in her husband's absence, kindly showed us round, declared it was nothing to a halibut which they had had the previous week. "It was," she added "taller than my husband." This method of measurement, halibut versus human, seemed to us a little peculiar; but was explained by a photograph of the event which we afterwards saw. The halibut was hung up, and Mr. S., the fish monger, was standing by its side. As the fish measured six feet in length, and the fishmonger was some four inches shorter, the meaning of the lady's remark became apparent. The actual weight of this monster was unknown; as they were unable to weigh over 200 lbs., at which it easily turned the scales.

Since writing the above I have received the last copy of the Prince Rupert "Empire," published on October 24th. The following quotation is given from the Vancouver *News Advertiser,* and according to "The Empire," it "may be taken as an official statement coming from the provincial government." It runs as follows: "The Provincial Government on Monday last concluded an arrangement with the Grand Trunk Pacific Railway and the Townsite Company of considerable interest and importance to the rising seaport of Northern British Columbia. The Government will advance the sum of $200,000 to the above com-

panies to be expended in improvements on the Prince Rupert townsite. The money is to be repaid to the Government within three years with interest at the rate of five per cent. per annum, the Government, however, bearing its share of one-quarter of the amount on account of its interest in the same proportion in the townsite.

The money will be expended under the joint supervision of the two parties to the agreement in the construction of a sewerage system adequate to the requirements of the population for the immediate future, and in the building of plank roads and sidewalks, so as to make all parts of the portion of the townsite to be cleared under the existing agreement between the Government and the company easily accessible. 'A plan of the proposed improvements will be made at once, and as soon as this is received and approved by the Chief Commissioner of Lands and Works, the work will be pushed to completion as speedily as possible. Besides this the railway company undertakes to provide a system of waterworks adequate to supply a population of several thousands without any unnecessary delay."

As a report has already been recently circulated that at least one of the hillocks to which I have referred is to be entirely removed, I hope that there is good reason for believing that the Government and the G. T. P. Railway are beginning to realize the great possibilities of Prince Rupert, and are prepared to lay out the townsite in a manner worthy of its position.

R. E. MACNAGHTEN.

North Vancouver, October 30th.

PROHIBITION AN ECONOMIC MISTAKE.

THE prohibition of stimulants is financially injurious to countries inviting immigrants and travellers, like most of the Canadian provinces. It is true that tourists can procure strong drink, sometimes with a little trouble which does not add to the pleasure of their trip. But the spirits they get are likely to be crude or adulterated, and the more harmless stimulants, such as wine and beer, which some of them may particularly desire, are sometimes unobtainable. They cannot take their stimulants in the most healthy and sociable way, in the public dining-rooms of their hotels. Self-respecting travellers do not relish sneaking into illicit bars and drinking behind locked doors, like criminals. Dr. Andrew Macphail recently declared that prohibition decreased the influx of summer tourists into Prince Edward Island. I can vouch for one instance of a very moderate drinker who cancelled an intended visit to that attractive island, partly perhaps because, according to his information, the quality of liquors to be obtained there was poor, though its quantity was unlimited. But his main motives were an inclination to make a silent protest against an arbitrary and ineffectual law and a disinclination to go where an innocent habit, as he considered it, was treated as a crime.

It is not alone to those travellers who are regular drinkers that prohibition may prove a deterrent hardship, for some people who are practically teetotallers during the rest of the year like to take an occasional glass of wine or whisky during their holidays only.

These aspects and results of prohibition are often as forbidding to immigrants as to tourists. To most British and German farmers and workmen the loss of their beer would be a serious deprivation. Europeans are usually accustomed to the right of exercising their free will in their private habits, except when those habits interfere directly with the rights of others. To them a life fettered by puritanical and sumptuary restrictions is uninviting.

If a decrease in rowdyism accompanied the prohibition of intoxicants in a country, this would be a gain that might com-

pensate tourists of refinement for the impairment of their liberty. But exhibitions of rowdyism that would be sternly repressed in non-prohibition countries are tolerated in prohibitory states and provinces of North America. I have seen in trains in both Maine and Canada drunken men flourishing bottles and making offensive remarks unchecked by the railway officials. On steamers where no liquors are sold I have seen unpunished sots excite the mirth of hoodlums and the disgust of other passengers by foul language and demonstrative expectorations. Such strange phenomena in prohibiting communities are repellent to its self-respecting tourists. And these phenomena are not likely to cease in communities where temperance in the use of liquors is deemed as culpable as excess; where the stimulants consumed, if less in quantity, are worse in quality than in non-prohibitive countries; and where some fanatics think that adulterated spirits are to be specially discouraged because being more destructive than pure liquor, they may force people to abstinence!

Many Canadian towns have beautiful gardens or parks, with bands and refreshments in the evenings and sometimes in the afternoons, the attractions of these plaisances might be doubled for tourists. But to persons accustomed to moderate alcoholic refreshments, a long evening without them is uninviting and wearisome even in pleasant surroundings. And to permit stimulants at places of public amusement would be to ensure rowdyism more deterrent than forced abstinence, unless the authorities would cease to act on the theory that drunkards are victims and not offenders, and would promptly arrest them as nuisances, as they are arrested in most civilized countries. There are beauty spots in Canada whose natural charms might rival the artificial charms of Earl's Court, if the municipalities or persons owning them could cater as attractively to the public, and if they enforced order as efficiently.

"Temperance" refreshment rooms and hotels not only do not meet the requirements of persons accustomed to alcoholic beverages, but they seldom are first class. And if they are, they seldom pay. Though cultured society no longer tolerates excess, yet a very large proportion of educated, attractive and fashionable people still are non-abstainers; and when these hold aloof from a restaurant or hotel, some of their friends who desire their companionship hold aloof also, and many outsiders, so great is

the snobbery of mankind, follow their example. It would be interesting to know how many first class temperance hotels, aiming to maintain the highest standard of excellence, continue in existence in Christendom.

Local option may be less injurious, financially, than prohibition, but it seems to me to be less defensible. It is a convenient device for transferring responsibility from legislatures to county councils. But the wisdom of a county does not presumably exceed the wisdom of a province. If it is right to prohibit strong drink, it should be prohibited by the province or state, or, if constitutionally possible, by the whole nation. If it be wrong to prohibit strong drink, single counties should not be permitted to enact or enforce what is wrong. Some counties might forbid dancing or taboo unorthodox religions or force one to go to bed at sunset, if counties could legislate upon these matters.

Prohibition involves another pecuniary loss to a country unless it forbids the importation as well as the manufacture and sale of alcoholic drinks. This the prohibiting states and provinces of North America do not or cannot do, and consequently all the unadulterated liquor consumed in them, excepting the products of illicit stills, is imported, the profit going to foreign dealers.

Present pecuniary loss, however, would probably be compensated, even materially, if prohibition improved the manhood and the morals of a nation. And even if the material loss were to be permanent, it should be borne cheerfully if prohibition were an effective and unobjectionable cure for intemperance and if the cure did not involve evils as great as those of the disease. Honour and morality conduce to the strength, the standing and the welfare of a nation more than wealth won by a sacrifice of principle.

But prohibition has been more or less ineffective everywhere. Where it has decreased the quantity it has impaired the quality of the liquor consumed. It has stimulated adulterative and illicit distilling. Where it has been most successful it has diminished moderate drinking more than drunkenness.

Viewed by so many intelligent people as an unwarrantable interference with liberty, it has fostered the defiance and non-enforcement of law. It has multiplied perjury in the courts. It

has made lying and hypocrisy epidemic. The bigotry of its uncompromising adherents has prevented their co-operating with moderate reformers in more practicable and less controverted tactics of Father Mathew and other reformers who have won the measures for encouraging temperance. It has abandoned the most signal victories of temperance. In the creed of some zealots abstinence has usurped the place of charity, as the chief of the virtues. The abstinence of some professional prohibitionists certainly does resemble charity in covering a multitude of sins. Even if prohibition did prohibit—if it won the concensus of the population of a country and were inexorably and effectively enforced—the unmeasured dangers of the precedent would still outweigh the advantage of this forced sobriety. For, if drunkenness were starved to death by statute, the precedent would justify a similar death sentence upon luxuries that are at present less execrated than "rum." In course of time the coercive moralists might forbid the pet indulgences of many who are now eager to impose "the will of the people" upon recalcitrant minorities or sleepy majorities. The principle being once established that the baneful abuse of a product justifies the prohibition of its use, there are many things besides alcohol that would call for prohibition.

To restrict the abuses of a product liable to abuse, or to deter our human passions from culminating in crime, as I have written elsewhere, is a legitimate aim of legislation. But to taboo the use of a thing because it is too often misused, or to destroy or seclude objects of human desire because our passions may be gratified therewith to a vicious extent, is to punish the temperate and to protect the intemperate. But it is more, it is to antagonize the place of Providence, which surrounds us with attractive things with which we may satisfy or glut our desires.

"That virtue," says Milton in his Areopagitica, "which is but a youngling in the contemplation of evil, and knows not the utmost that vice promises to her followers, is but a blank virtue, not a pure." The great poet, Spenser, he adds, "describing true temperance under the person of Givon, brings him in with his palmer through the cave of Mamenon and the bower of earthly bliss, that he might see and know and yet abstain.

"Many there be that complain of divine Providence for suffering Adam to transgress. Foolish tongues! When God gave

him reason, He gave him freedom to choose, for reason is but choosing. He had been else a mere artificial Adam, such an Adam as he is in the motions (i.e. in the puppet shows). We ourselves esteem not of that obedience or love or gift which is of force. God therefore set him free, set before him a provoking object, ever before his eyes; herein consisted his merit, herein the sight of his reward, the praise of his abstinence. Wherefore did He create passions within us, pleasures round about us, but that these rightly tempered are the very ingredients of virtue. They are not skilful considerers of human things who imagine to remove sin by removing the matter of sin."

Virtue and vice work upon the same materials. Remove or destroy the materials on which both temperance and intemperance exercise themselves and you have stimulated neither. But you have effected compulsory abstinence. You have made a solicitude and you boast of peace. A vacuum is not a virtue.

Were the prohibitive principle to prevail and spread, we should lose the privilege and the duty of choosing between good and evil, our self-control and our initiative energies would wither, and the progressive self-reliant races would grow as spiritless and passive as the thralls of an Oriental despotism.

F. Blake Crofton.

STOCK-DIVIDENDS, BONUS DIVIDENDS, BONUSES AND RIGHTS TO NEW STOCK—ARE THEY CAPITAL OR INCOME?

By JOHN J. CREELMAN, B.C.L.

DOES the right to subscribe to an issue of new stock accrue to the proprietor of the shares in respect of which new stock is allotted, or to the usufructuary;[1] in other words, is this right to be considered as capital or to be treated as income?

Many questions analogous to this have been determined by the Courts in England and in the United States during the past century, although it is not so frequently that the Canadian Courts have been called upon to decide this question. Very recently, however, the Superior Court in Montreal had before it the very point outlined above and the judgment rendered by Mr. Justice Martineau is of great interest, not only to the lawyer, but to the banker, trustee and student of economics as well. This was in the case of *Lamb* v. *Lamb et al.*,[2] where the learned Judge, basing his reasoning partly upon certain articles of the Civil Code of the Province of Quebec and partly upon the writings of certain French authors, reached conclusions almost identical with those arrived at in judgments rendered in England in cases where the decisions were based on the common law and on a long series of previously decided cases.

Mr. Justice Martineau asks the question in this way: "Is it to the usufructuary or to the proprietor of the shares that accrues the right of subscribing to a new issue of stock, which right, by reason of the issue being made at a price lower than the market value of the former shares, has, *per se*, a special value of its own; or if such right is in part disposed of for value and with the consideration so received from the sale thereof, pur-

[1] C. C. 443.—"Usufruct is the right of enjoying things of which another has the ownership, as the proprietor himself, but subject to the obligation of preserving the substance thereof."

C. C. 447.—"The usufructuary has the right to enjoy every kind of fruits, whether natural, industrial or civil, which the thing subject to the usufruct can produce."

[2] Published in the Montreal "Gazette," September 4th, 1908, and not yet officially reported.

chase is made of some new stock primarily assigned to the original shareholders, to whom does such new stock belong?"

In this way is brought up the wide question of what is capital and what is income, because in most cases of this nature, it must be determined to what extent one person is the proprietor or the remainderman, and in how far another is the usufructuary or the life-tenant.

The question raised in *Lamb* v. *Lamb* is one of greatest importance to trustees and those holding fiduciary positions regarding estates, because where the instrument of trust is silent, the trustee may at any time find himself in a quandary to know exactly for whose benefit he holds certain newly allotted shares or rights to subscribe to new shares. Besides, if a trustee has made a mistake he may be required by law to make good out of his own pocket the results of that mistake. The testator may have specified in his will that such and such a class of shares or dividends are to be regarded as either capital or income, but we are considering the case where the instrument is either silent on the subject or else not sufficiently explicit. When the case is one involving an issue of new shares, bonus dividends, or rights to new stock, it is frequently very difficult to determine just what is capital and what is income; however, the trustee must decide correctly or become personally liable for his mistake.

In the case where the instrument is silent or vague, it must be decided whether the bonus dividends, share dividends, rights to subscribe for new shares, etc., are to be considered as profits arising from the successful management of the company's affairs, or as an accretion to the capital, and, as such, moneys to be invested by the trustee for the benefit of the whole estate.

In *Lamb* v. *Lamb*, the facts were as follows:—By deed of gift *inter vivos* a certain piece of real estate in Montreal had been given to the defendants, the children of the plaintiff, with the proviso that the plaintiff should receive, during his lifetime, the rents, issues, revenues and profits to be derived from the property. Here the plaintiff was the usufructuary, and with the consent of all the interested parties the property was sold for $35,000.00, and 260 shares of C. P. R. stock were bought with this money in replacement of the property. The shares, in virtue of an agreement entered into by all the parties, were registered

in the books of the railway company in the name of the plaintiff as usufructuary and of two of the defendants as trustees. Since purchasing the stock the C. P. R. Company had issued new stock on three separate occasions, the shareholders each time having the right to take one share of the new stock for every five shares of the old stock held by them, such right being transferable. The parties in this action subscribed for 38 shares, paying for the same out of moneys received from the sale of the balance of their rights. The usufructuary continued to receive the dividends upon the new shares as upon the former lot and the action was brought by him claiming the ownership of the new shares.

Judge Martineau found that the ownership of these new shares was vested in the children and not in the usufructuary, holding that the circumstances surrounding the several issues of the new stock and the wording of the resolution authorizing such issues showed an express intention that such shares should belong, not to the nominal possessor, but to their proprietor. The shareholders had voted to issue these new shares and they were offered to the registered shareholders. It rested with the shareholders to decide whether they should or should not issue new shares, and they were free to issue them at whatever price they wished, and to whom they deemed proper.

This is the first case of the kind to be decided by the Quebec Courts, the finding being, as we will see, in accordance with the law in England as well as in the United States.

The leading case in England is that of *Bouch* v. *Sproule*,[1] in which Lord Herschell, in a most elaborate judgment, discussed a great number of previous decisions on the subject.

Taking these cases in chronological order, the first to be considered in point of time is that of *Brander* v. *Brander*,[2] decided as far back as 1799. In this case the Bank of England had paid out of their fund for the public service £1,000,000, receiving in exchange £1,125,000—three per cent. annuities, which it was resolved to distribute pro rata among the proprietors of Bank Stock. The question arose whether the proportion allowed to the testator's representatives was to be regarded, as between the tenant for life and remainderman, as income or capital.

[1] L. R., 12 App. Cas., 385.
[2] 4 Vesey, 800.

Lord Rosslyn took the view that it was capital, stating: "If I am to go upon principle, I must hunt it back, and see to what part of that saving each is entitled. I have often considered this question, and it seems to me, in all the different ways I can turn the consideration of it, that there was no way to be taken but to consider it as an accretion to the capital." Lord Herschell disagrees with this judgment on the ground that the company had in no way stated that either the £1,000,000 which had been advanced for the public service, or the annuities which were received in return for it, should be capital; and that at any rate the Bank could not have declared that either of these sums should be added to or form part of its capital properly so called, as the Bank had no power to increase its capital, except by obtaining an Act of Parliament.

Lord Herschell thinks that the decision in *Brander* v. *Brander* proceeded on the grounds that the accumulated profits had become part of the floating capital of the concern, but goes on to state that "they had become so, not by reason of any declaration of the company that they should be so, but only in the sense that, having accumulated, they were, *de facto,* used as part of the capital. In this sense, however, all accumulated profits which are in use for the purpose of the business of any company, may equally be said to form part of its capital."

In *Irving* v. *Houstoun,*[1] the foundation of the judgment was that the accumulated profits had become part of the floating capital of the concern. This was a case connected with the Bank of Scotland, the capital of which bank was limited by Parliament to a certain amount. Lord Eldon in delivering judgment said: "This limitation, if strictly adhered to, would have this inconvenience attached to it, that circumstances might occur to oblige them to reduce their ordinary dividends. Therefore, it is that these companies have what is termed their floating capital, which they lay out in the purchase of exchequer and navy bills, in discounts and every species of property that can be turned into cash at pleasure. Every person who buys bank stock is aware of this, and if he gives a life interest in his estate to any one, it can scarcely be his meaning that the liferenter should

1 4 Paton Sc. App., 521.

run away with a bonus that may have been accumulating on the capital for a half-century."

The judgment in *Irving* v. *Houstoun* was followed in 1847, *in Re Hodgens,*[1] where, the directors of the Bank of Ireland having decided, "on account of the favorable result of the last four years," to recommend a bonus of five per cent. in addition to the ordinary dividend of four per cent., it was held by Lord Chancellor Brady that this bonus must be considered as capital.[2]

In *Barclay* v. *Wainewright,*[3] a disposition began to be shown to limit the operation of the rule laid down in *Brander* v. *Brander*. The directors of the Bank of England had declared a dividend of five per cent. interest and profits for the half-year. It was contended that as this exceeded their ordinary dividend of three and a half per cent., a portion of it must be treated as capital. Lord Eldon, in repelling this contention, said: "If it be contended that any part of the five per cent. is given out of, or to be paid from, capital, the case must be brought before the Court, either making that out by evidence, or under circumstances forming a fair ground for enquiry. But as the case now stands I have no means of considering it as more or less than a declaration in the due execution of the right and duty of the bank that the dividend, which the proprietor ought to receive, is a half-yearly dividend of five per cent."

In *Preston* v. *Melville,*[4] the directors of the Bank of England having declared a dividend of £3 10s per cent. out of interest and profits for the half-year, and in addition thereto, a bonus out of interest and profits of one per cent., the Vice-Chancellor of England held the tenant for life entitled to both. Lord Herschell notes that in this case there was nothing to show that the bonus was to be paid out of accumulated profits.

The decision in *Irving* v. *Houstoun* was not considered as applicable only to bank dividends, but was followed in the case of other companies. Thus, in *Ward* v. *Combe,*[5] where the London Assurance Company had voted the ordinary dividend of £1 a share, and, by another resolution on the same day, had pro-

[1] 11 Ir. Eq., 99.

[2] Also followed in 1804, in Paris v. Paris, 10 Vesey, 185; Clayton v. Gresham, 10 Vesey, 288; in 1807, in Witt v. Steere, 13 Vesey, 363.

[3] 14 Vesey, 66.

[4] 16 Sim., 163.

[5] 7 Sim., 634.

vided that £12 per share should be taken out of the profits of the Company and divided among the shareholders, the Vice-Chancellor held that the £12 a share was capital, stating that there was nothing to show at what time the profits out of which the sum taken arose, and that they might have been profits that had lain dormant for a series of years. Lord Herschell [1] says that this was a clear recognition of the doctrine that a division of accumulated profits among the shareholders is to be regarded as given by way of increase of capital.

In *Price* v. *Anderson*,[2] the same Vice-Chancellor held in the case of the Royal Exchange Assurance Company, whose practice was to declare dividends on their stock half-yearly, and bonuses at intervals of two or three years, that a dividend of £12 10s per cent. declared in 1846, in addition to the ordinary dividend, belonged entirely to the tenant for life. Lord Herschell notes that in 1840, where the same company had resolved that, in addition to the ordinary dividend of £2 10s per cent., a distribution of five per cent. out of accumulated profits be made to the proprietors, the Vice-Chancellor had held that as this bonus was not made as a dividend, it must be considered as capital and accordingly ordered it to be invested. Regarding this, Lord Herschell says: "The distinction apparently was in this case that the dividend in terms was paid out of accumulated profits and was not expressed to be a dividend."

Lord Herschell places himself on record as agreeing with the judgment of Lord Justice Fry in the Court of Appeals:[3] "When a testator or settlor directs or permits the subject of his disposition to remain as shares or stock in a company which has the power either of distributing its profits as dividends or of converting them into capital, and the company validly exercises this power, such exercise of its power is binding on all persons interested under the testator or settlor in the shares and consequently what is paid by the company as dividend goes to the tenant for life, and what is paid by the company to the shareholder as capital or appropriated as an increase of the capital stock in the concern, enures to the benefit of all who are interested in the capital." Lord Herschell, however, adds: "It

[1] Bouch v. Sproule, 12 App. Cas., 396.
[2] 15 Sim., 473.
[3] Bouch v. Sproule, 29 Ch. D., 635.

appears to me that where the company has power to increase its capital and to appropriate its profits to such increase, it cannot be considered as having intended to convert, or as having converted, any part of its profits into capital, when it has made no such increase, even if a company having no power to increase its capital may be regarded as having thus converted profits into capital by the accumulation and use of them as such."

We now come to *Bouch* v. *Sproule*,[1] the leading case in England on the subject. Here, the testator had bequeathed his residuary personal estate to his executor, Sir Thomas Bouch, in trust for the testator's wife for her life and after her death to Sir Thomas Bouch. Part of the residuary estate consisted of shares in The Consett Iron Company, whose directors had power, under the articles of association, before recommending a dividend, to set apart out of the profits such sum as they thought proper as a reserve fund, for meeting contingencies, equalizing dividends or repairing or maintaining the works.

After the testator's death the directors of the company proposed to distribute certain accumulated profits (which had been temporarily capitalized) as a bonus dividend, to allot new shares (partly paid up) to each shareholder, and to apply the bonus dividend in part payment of the new shares. This proposal was carried out, and with the executor's consent new shares were allotted to him and registered under his name, the bonus dividend on the testator's old shares being applied in part payment of the new shares.

The Court of Appeals [2] had reversed the judgment given by the judge, holding that the bonus of the new shares belonged to the life-tenant and not to the remainderman. This judgment of the Court of Appeals was in turn unanimously reversed by the House of Lords, who held that looking at all the circumstances the real nature of the transaction was that the company did not pay or intend to pay any sum as dividend, but intended to, and did appropriate the undivided profits as an increase of the capital stock; that the bonus dividend was therefore capital of the testator's estate, and that the life-tenant was not entitled to the bonus of the new shares.

[1] 12 App. Cas., 385.
[2] 29 Ch. D., 635.

Lord Watson in delivering his judgment said:[1] "In a case like the present, where the company has the power to determine whether profits reserved, and temporarily devoted to capital purposes, shall be distributed as dividend or permanently added to its capital, the interest of the life-tenant depends, in my opinion, upon the decision of the company." On this point Lord Watson agrees with the observation made in another case by Vice-Chancellor Hatherley,[2] that: "The dividend to which the tenant for life is entitled is the dividend which the company chooses to declare. And when the company meet and say that they will not declare a dividend, but will carry over some portion of the half-year's earnings to the capital account and turn it into capital, it is competent for them, I apprehend, to do so; and when this is done everybody is bound by it and the tenant for life of those shares cannot complain." Lord Watson,[3] in discussing this observation of Lord Hatherley's, says: "In my opinion that rule must obtain, whether the profits with which the company is dealing belong to the current year, or have been previously reserved for the purpose of its business."

In *Re Barton's Trust*,[4] referred to above, certain shares in the company had been settled upon trust to pay A., during her life, "the interest, dividends, shares of profits and annual proceeds," and after her death in trust for her children. The deed of settlement of the company provided that by the majority vote, out of the half-yearly profits a dividend might be declared, and a sum reserved for such contingencies as the directors should specify. During A's lifetime an addition was made of three new fully paid-up shares to those already allotted in trust for her, pursuant to a resolution passed at a general meeting of the company to apply a portion of "the net earnings during the half-year" to necessary work, and to issue new shares to represent the money so applied, a dividend being declared out of the remaining portion of the earnings. It was held that these new shares were capital, and not income, as between the tenant for life and those entitled in remainder.

In the case of companies authorized to increase their capital, we have still to consider whether new shares issued without

[1] 12 App. Cas., 401.
[2] In re Barton's Trust, L. R., 5 Eq., 244.
[3] 12 App. Cas., 402.
[4] E. R. 5 Eq., 238.

reference to any bonus are capital or income. This point was dealt with in 1855, in *Rowley* v. *Unwin*.[1] New shares had been allotted to trustees of the marriage settlement in respect of their former holding, the calls upon which were paid by the trustees out of the income of the life-tenant. The trustees then sold the new shares and invested the proceeds. Vice-Chancellor Sir W. Page Wood held that the new shares were capital of the trust and that the tenant for life had only a charge on the trustees for the amount of the calls paid out of her income.

The last English decision for consideration is that of *In re Malam* [1894], 3 Ch. 578; where *Bouch* v. *Sproule* and *Rowley* v. *Unwin* were followed and the rules of law laid down in these cases quoted and approved. The facts were:—A testator gave all his property to trustees in trust to convert and invest in authorized investments and pay the income to his wife during her widowhood, and after her death or second marriage to divide the *corpus* between several persons. The testator authorized postponement of conversion, and declared that until conversion the income should go as if the property had already been converted. Part of the testator's estate consisted of shares in a company. Four years after the testator's death, the company decided, by special resolution, to increase the capital, the new shares to be offered to the existing shareholders as the directors might determine. A circular was issued offering the shareholders the option of taking such new shares in proportion to their holdings, the amount to be paid up on the allotment to be deducted from their current dividend. The trustees, who were then registered as the holders, treated the allotment as the property of the life-tenant and renounced their right to the shares in her favor. It was held that the allotment must be considered to be for the benefit of all the beneficiaries, and that the tenant for life was only entitled in respect thereof to receive such dividend as she would have received if the option of taking new shares had not been exercised and the allotment had not been made.

Mr. Martin Griffin, Parliamentary Librarian at Ottawa, in an article contributed to the "Canada Law Journal,"[2] sum-

[1] 2 Kay & J., 138.
[2] Vol. 36, page 113.

marizes the result of the English cases as follows: "In the case of companies with a capital stock limited by law, a bonus or special dividend out of the accumulated profits of the company which has been held and used by the concern as part of its working capital, is capital and so remains in the hands of the shareholders. In the case of companies authorized by law to increase their capital stock, what is declared by them as dividend is income for the old shareholders, but any capitalization of profits by the company, whatever form it may take, is binding on all the holders of stock and enures to the benefit of all persons interested in such stock. New shares issued by such companies in connection with any distribution of profits are capital in the hands of the former shareholders to whom they are allotted."

An excellent summing-up of the authorities cited in *Bouch* v. *Sproule* is given by Lindley,[1] wherein the law at the present time is enunciated as follows:—

(1) "If the company has no power to increase its capital, but accumulates profits, issues them as capital, and afterwards divides them amongst the shareholders, the amount payable in respect of shares held for life must be treated as capital."

(2) "If a company can lawfully increase its capital, and it does so by capitalizing and distributing its accumulated profits, then what is distributed in respect of shares held for life must be treated as capital, whether what is distributed is cash or new shares."

(3) "If a company having power to treat accumulated profits as an increase of capital, or otherwise, divides accumulated profits amongst its shareholders as profits, or without capitalizing them or treating them as capital, what is distributed in respect of shares held for life will belong to the tenant for life as income."

(4) "If a company having power to increase its capital chooses not to divide its profits as income, but to capitalize them, the sum payable to the legatee of shares for life must be treated by him as capital."

In the United States the courts have frequently had to decide questions regarding stock-dividends, bonuses, etc., both in the Federal Courts and in the courts of the various States. The

[1] "Company Law," at page 742.

leading case may be said to be that of *Gibbens* v. *Mahon*, decided in 1890 by the United States Supreme Court,[1] which court, after considering the case for upwards of a year and a half, finally rendered an elaborate judgment containing copious citations from the law and references to numerous authorities.

In *Gibbens* v. *Mahon*, the facts were as follows:—A testatrix had bequeathed stock in a corporation and Government bonds in trust, to pay "the dividends of such stock and the interest of said bonds as they accrue" to a daughter of the trustee "during her lifetime without percentage of commission or diminution of principal," and directing that upon her death, "the said stocks, bonds and income would revert to the estate" of the trustee, "without incumbrance or impeachment of waste." It was held that a stock-dividend, declared by the corporation which from time to time before and after the death of the testator had invested accumulated earnings in its permanent works and plant and which since his death had been authorized by statutes to increase its capital stock, was an accretion of capital, and the income thereof only was payable to the tenant for life.

The question in this case was whether 280 new shares of stock in the Washington Gaslight Company were to be treated as dividends of the whole or part of the principal to which the plaintiff was entitled under the will, or were to be treated as an increase of the capital of the trust fund and the plaintiff therefore entitled to receive only the income thereof. The lower court had held that the new shares must be treated as capital, the income only of which was payable to the plaintiff. This judgment was affirmed by the Supreme Court.

Many cases have been heard in the various State Courts of the United States, some of which were discussed by Mr. Justice Gray in his summing-up in *Gibbens* v. *Mahon*, referred to above. One of these was *Minot* v. *Paine*,[2] in which it was held that if a fund held in trust to pay an income to one until his death, and then convey the capital to another, includes shares in a corporation, the shares of additional stock distributed to the trustee is a lawful dividend therein and accrues to the capital, although such shares represent net earnings of the corporation.

[1] 136 U. S., 149.
[2] 99 Mass., 101.

Another Massachusetts case [1] decided that as between the life-tenant and remainderman of a trust fund in stock, the proceeds of the sale of a right to share in the distribution of new stock are to be treated as capital.

It was decided in a Kentucky case,[2] that as between the life-tenant and remainderman of an estate in stock, a privilege given by the corporation to subscribe to additional stock at par belongs to the remainderman, as appurtenant to the capital.

In a Pennsylvania case,[3] regarding an option to subscribe to new shares, it was held that where there has been an enhancement of the capital of a corporation and it represents such enhancement by an increase of its capital stock, the privilege of subscribing to which it offers pro rata to the stockholders, such enhancement in value to the capital of the corporation is an incident to the ownership of each share of the stock, and goes to the *corpus* of the estate. This rule is based on the general doctrine that an increase in the value of trust investments must be treated as capital.

From the consideration of the English and United States cases, we see that the judgment of Mr. Justice Martineau, in the Montreal Courts, referred to in the first page of this article, is in conformity with a long chain of authority and precedent, and there is little doubt but that any future case coming before the Canadian Courts will be decided similarly.

We have seen that money earned by a corporation remains the property of the corporation, and does not become the property of the stockholders, unless and until it is distributed among them by the corporation. The corporation, however, may treat it and deal with it either as profits of its business or as an addition to its capital. Acting in good faith and for the best interest of all concerned, the corporation may distribute its earnings at once to the stockholders as income, or it may reserve part of the earnings of a prosperous year to make up for a possible lack of profits in future years, or it may retain portions of its earnings and allow them to accumulate and then invest them in its own works and plant, so as to secure and increase the permanent value of its property. Reserved and accumulated earn-

[1] Atkins v. Albree, 12 Allen, 359.
[2] Hite v. Hite, 93 Ky. 257; 40 Am. St. Rep., 189.
[3] Biddle's Appeal, 99 Pa. St., 279.

ings, so long as they are held and invested by the corporation, are part of its capital property, and it follows that the interest therein, represented by each share, is capital, and not income, of that share, as between the tenant for life and the remainderman.

In ascertaining the rights of persons benefitting under a will, the intention of the testator, so far as manifested by him, must of course control; but when he has given no special directions upon the question as to what shall be considered principal and what income, he must be presumed to have had in view the lawful power of the corporation for the use and apportionment of its earnings, and to have intended that the determination of that question should depend upon the regular action of the corporation with regard to its shares. However, when a distribution of earnings is made by a corporation among its stockholders, the question whether such distribution is an apportionment of additional stock representing the capital, or a division of profits and income, depends upon the substance and intention of the action of the corporation, as manifested by its vote or resolution; and ordinarily a dividend declared in stock is to be deemed capital, and a dividend in money is to be deemed income.

A stock dividend really takes nothing from the property of the corporation, and adds nothing to the interest of the shareholders. Its property is not diminished, and their interest is not increased. After such a dividend, as before, the corporation has the title in all the corporate property; the created interests therein of all the shareholders are represented by the whole principal of shares; and the proportional interest of each shareholder remains the same. The only change is in the evidence which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of the new ones.

In conclusion, it may be said, that although the legal position of stock-dividends, bonus dividends and rights to subscribe to new stock has up to the present time been well determined as regards the question of capital and income, that there is little doubt that at a future time the courts will again be required to decide upon some new mode of bestowing benefits or a new variety of dividends, which some ambitious corporation will in the course of time distribute among its shareholders.

THE BLOT UPON JAPAN.

THE low tone of commercial morality in Japan has been much advertised and commented upon. Though some recent travellers have noticed symptoms of improvement, Japanese traders are still more often tricky and unreliable than the merchants of China and some other countries. The cause of this blot on the reputation of Japan is not hard to find. A feudal system until recently prevailed there, and under that system trade was much despised as it used to be by the patricians of Rome. In Hindustan the Brahmans outranked the Kshatrias, but in Japan the profession of arms ranked the highest and trade the lowest among the vocations. Agriculturists had a deservedly high place, coming next to the samurai, while even mechanics preceded traders in the popular estimation. "The obloquy attached to the calling," writes Inazo Nitobe, in his *Bushido; the Soul of Japan,* "naturally brought within its pale such as cared little for social repute. 'Call one a thief and he will steal.' Put a stigma on a calling and its followers adjust their morals to it."

A similarly loose morality prevailed among the European traders in the Middle Ages. Being contemptuously looked down upon by the gentry, their self-respect and their sense of honour were impaired. The Jews in particular, who did so large a share of the mercantile and financial business, were so despised and ill-treated that it was a joy to some of them, as it was to Shylock, to cheat their persecutors.

In Japan the merchants of the feudal period had indeed a code of morals among themselves, says Professor Nitobe, "but in their relations with people outside their vocation, the tradesmen lived too true to the reputation of their order." When feudalism was abolished and the samurai received financial compensation for their surrendered fiefs and privileges, some of them went into business and were sadly tricked and cheated by their more unscrupulous rivals. But the fact that many nobles have entered the commercial field, must tend to raise the status

of trade and the self-respect of traders; and this again must help to raise the standard of commercial honesty.

Already there are signs of improvement. Japanese merchants have discovered, says Professor Nitobe, that honesty is the best policy. Morality is now taught in every public school (see M. Sawayauagi's paper in *Japan by the Japanese*). Teachers impress upon the young the nobility of the virtues, the evils and dangers of the vices. The unsuperseded truths of Bushido ("the way of the warrior") are no longer taught exclusively to the samurai, but to all classes alike. And, while the state prescribes moral instruction, it avoids the possibility of offending any sect by teaching even the most elementary religious dogmas in the public schools. Among the healthy results of the Japanese educational system is the gradual decrease of dishonesty in trade. "No more striking proof of Japan's progress in commercial morality is to be found than in the fact of there being no contractor scandals in connection with the present (late) war," remarks Mr. Alfred Stead, in his *Great Japan*.

It is to be hoped that the removal of their unreasonable contempt for trade may not lead the Japanese to the opposite extreme—that they may never worship Mammon, like many so-called Christian nations, or begin to sacrifice honour to financial expediency or cease to rate a man by his qualities and deeds rather than by the number of his dollars.

F. BLAKE CROFTON.

SOME NOTICES OF THE OLD WEST INDIA TRADE.

THAT Canada and the West Indies ought to have intimate trade relations appears to be an axiom, if not in the mercantile world itself, at least with those who take a layman's interest in commercial questions. To the latter, an obvious basis of exchange would seem to exist in the variety of products which each can place on the market to the other's advantage. Traffic between the two also, would increase the volume of what one writer (E. J. Payne: Colonies and Colonial Federations), has recently designated as intra-imperial trade. Yet there would appear to be a general agreement that the possibilities of this trade have never been exploited as fully as they deserve. The statements of many observers within the last few years are unanimous as to the point.

But slight as the traffic admittedly is, it has a history running back to the very early years of Canada's economic development; almost, in fact, to the very beginning of the attempt to utilize resources, other than the fur trade, for giving the colony a foundation of economic self-sufficiency. Indeed, as soon as Canada was able to commence an export trade, other than in furs, the West Indies, and more particularly the Antilles, were looked upon as the likeliest market to be supplied. Unfortunately for historical purposes, the material available for tracing the history of this export trade is not only slight, but very much scattered. It thus becomes almost impossible to write a full, or even a connected account of Canada's relations with the West Indies, at least through the seventeenth and eighteenth centuries. The notices offered below, have been gleaned from various sources here and there. They are by no means adequate for venturing any conclusion upon the subject; but they have the merit perhaps of suggesting much that may be of interest in this connection.

Those who guided the destinies of Canada through its earliest years were perforce too intent upon the colony itself to give much consideration to the broader question of the colony's

ties with other French possessions in America. Champlain, it need hardly be stated, was thoroughly familiar with parts of Spanish America, having seen service at one time in the Spanish navy. His experience as an officer under the King of Spain probably earned him his title of Geographe Royal, which he held when first sailing to Canada. The difficulty of keeping alive the struggling colony at Quebec engrossed all of Champlain's energy as governor. He tried to make Quebec a self-supporting settlement; but in this he failed. Nor could the Company of One Hundred Associates look beyond their immediate interests in the St. Lawrence valley, harrassed as they were by disastrous Indian wars. It was not until Canada became a royal province under the zealous administration of an intendant that the wider opportunities of colonial trade began to be appreciated. But from the days of Talon until the cession of Canada in 1760, one of the cardinal principles of French colonial, or, as we like to say now, imperial administration was the fostering of trade relations between the American possessions.

Talon was the first to see that much that the West Indies needed could be supplied from Canada. With the building of mills on the seigniories, ever increasing in number, Canada came to produce a surplus of wheat and flour. With the development of fisheries and their by-products, as with the exploitation of the boundless stretches of timber land, commodities were easily available for intercolonial trade. There is no need to go to Talon's own correspondence with Colbert to see the hopeful view which was then entertained of the market for Canadian products in the West Indies—the Jesuit Relations supply sufficient evidence as to the point. Thus we read in le Mercier's Relation of 1666-1667 (Thwaites, Jesuit Relations: L., p. 239 *et seq*).

"The first thoughts of M. Talon, Intendant for the King in this country, were to exert himself with tireless activity to seek out the means for rendering the country prosperous. He does this both by making trial of all that it can produce, and by establishing commerce and exchange not only with France, but also with the Antilles, Madeira and with other countries, Europe as well as America."

Specific commodities are mentioned as follows:—

"Seal fishery furnishes the entire country with oil, and

yields a large surplus which is exported to France and to the Antilles."

"The commerce which M. Talon proposes to carry on with the Islands of the Antilles will be one of the country's chief resources; and already to ascertain its profitableness he is this year shipping to those islands fresh and dried codfish, salted salmon, eels, peas, both green and white, fish-oil, staves and planks—all Canadian products."

"He is causing the felling of all kinds of timber, which is found everywhere in Canada; he has started the manufacture of staves, for export to France and the Antilles."

To give the new departure the appearance of an intercolonial movement, Talon conceived the scheme of shipping the goods he had designed for the Antilles in a vessel of Canadian build. But the ship-building industry never flourished under the French regime, and the impetus which West Indian traffic might have gained from the existence of a Canadian mercantile marine was always lacking. Canadian products found their way to the Antilles in ships that took the triangular course from La Rochelle to Quebec, thence to the Antilles, and thence back to La Rochelle.

Beyond the fleeting mention of Talon's first efforts, the Jesuit Relations are silent upon the subject of West Indian traffic. When one considers how completely mercantile energy in the new colony went to the opening up of the interior of Canada it is not difficult to see that Talon's well meant promotion of an intercolonial sea-going trade would hardly have met with response. The natural lines along which, under the French regime, Canadian trade ought to have been promoted were patent to every inhabitant of the St. Lawrence valley, and no move to divert attention artificially from the interior to the problematical advantages of intercourse with the Antilles would be likely to receive popular support.

Did Talon seriously think his projected export trade to the Antilles an opening which for Canada was economically advisable? Did he have the interests of Canada alone in mind, or was he simply planning to use Canada in fulfilment of some extensive imperial scheme? There are reasons to believe that his chief object in diverting attention to the West Indies was really for the strategic advantages which might ensue to the Antilles

in case of a general naval war. The Quebec Literary and Historical Society has in one of its valuable volumes of Historical Documents (First and Second Series), a memoir copied from a manuscript in the French Department of the Marine, and attributed to Talon. It is entitled: Memoire sur l'Etat Present du Canada, and the year is given as 1667. In this the Intendant writes:—

"The Colony of Canada can assist by its products the subsistence of the Antilles, and become to them an assured support if help from France were ever lacking. Canada's contribution could be in flour, vegetables, fish, lumber and oil, and other things which have not yet been discovered."

"To the extent that Canada receives additions to its population it will be able by its people, naturally soldiers and accustomed to all manner of hardship, to sustain our more southerly American possessions if the home country (Ancienne France) could not bring them help; and this could be done the more easily if Canada had a merchant marine of her own."

How little is here said of the possible advantages to Canada of the projected trade! Talon's views seem to have been those of an imperialist administrator, subordinating individual colonies to his schemes for the French colonial empire as a whole.

A notice which may be attributed approximately to the year 1700 gives the evidence of a French traveller on the existence of the West India trade at the opening of the eighteenth century. It also shows the triangular course followed by some of the trading vessels from La Rochelle. The notice comes from Lahontan's Memoires (Vol. II, p. 66).

"Most of the ships," it states, "which go laden to Canada return empty to La Rochelle or to the other French ports. But some take on a cargo of peas when they are cheap in the colony, while others take on planks and timber. Some go to Cape Breton to load up with charcoal for transport to Martinique and Guadaloupe where it is much used for the sugar refineries."

A memoir of the year 1736, printed in the Historical Documents of the Quebec Literary and Historical Society, and attributed to the Intendant Hocquart, makes but very slight mention of export trade. Addressing Cardinal Fleury upon the subject of Canada as a whole, Rocquart writes:—

"The principal growth (of Canada) is wheat. The country

produces not only enough for the subsistence of its inhabitants, but also for trade with the Isle Royale and the West Indies."

A further memoir, this of the year 1758, being a report upon the decline of Canadian trade at the time of the Seven Years War, looks back to the period immediately following the conclusion of the Treaty of Aix-la-Chapelle. This memoir is likewise printed in the Historical Documents of the Quebec Literary and Historical Society. The writer, Beaumont, says:—

"Canada not only used to furnish enough subsistence for its inhabitants; it exported in 1749 large quantities of flour to Louisburg and to the West Indies." The colony then furnished annually 80,000 minots of wheat, of which 60,000 were required for home consumption. Beaumont then suggests that a bureau be established to husband the surplus production of the colony, year by year, with the idea perhaps of disposing of it to other colonies, and in particular the West Indies. And he declares that the colony "would pay with its own commodities for what comes from the West Indies, if the surplus wheat were only saved and utilized for trade." He adds:—"It would be necessary not to neglect the raising of cattle. That which could not be consumed could be salted and sent to the West Indies where Irish meat has now such a good market." The planters in the West Indies were, it is true, often in a critical position during a general war, and it might have been well had supplies been obtainable from some source other than France itself. We know that during the disastrous Seven Years War flour in the Antilles was only to be had at famine prices, while manufacturing utensils "were worth their weight in gold." (E. Regnault, Les Antilles, p. 34).

Yet despite the many well meant endeavours to foster it, the West Indian trade does not seem to have flourished under the French regime. With the close of the Seven Years War a traffic between Canada and the British West Indies began to develop. Many of the official statistics of this traffic have, it would appear, been destroyed by fire. But a tolerably complete compilation for the years 1768-1783, the year of the Treaty of Versailles, are to be found in the Reports of the Canadian Archives for 1882-83-84. From them some idea of the volume of later eighteenth century trade with the West Indies can be gathered.

The imports are given first in the table below:—

Year.	No. Ships.	Rum.	Molases.
1768	7	8,000	15,158
1769	5	19,943	14,757
1770	6	19,557	36,870
1771	16	4,308	34,714
1772	14	19,815	32,090
1773	5	28,061	1,675
1774	25	47,186	101,219
1775	15	3,963	64,701
1776	6	22,952	36,859
1777	12	73,211	16,646
1778	18	191,182	63,317
1779	11	187,855	23,940
1780	10	105,907	104,658
1781	12	253,055	80,331
1782	9	48,818	58,072
1783	15	46,080	139,481

The volume of the export traffic appears in the two following tables:—

I.—Fish and Grain.

Year.	Ships.	Codfish.	Salmon.	Flour.	Wheat.	Peas.
1768	6	610	50	18	23,962	20
1769	11					
1770	14	2,886	1,977	893	29,984	320
1771	23	4,429	750	728	104,349	403
1772	27	5,304	1,400	820	216,056	653
1773	50	3,300	556	966	221,645	1,256
1774	67	5,543	433	90	383,438	694
1775	26	5,270	349	855	88,724	15
1776	15	4,787	1,900	458	33,000	67
1777	18	3,451	2,890	1,318	1,044	71
1778	13	7,260	228		4,000	
1779	20		300			
1780	8	280	128			
1781	13	699	67			
1782	7	70	39	60		
1783	13	1,098	275	3,681		700

II.—Lumber and Wood Products.

Year.	Planks and Boards.	Hoops.	Staves.	Shingles.
1768		20,750		
1769	100		7,040	
1770	57,943	12,000	1,800	
1771	4,260	12,200	1,900	
1772	5,895	5,300	5,305	
1773	2,673	5,100	11,800	
1774	4,550	17,000	1,712	
1775	20,437	25,000	18,509	
1776	8,990	57,160	3,175	
1777	27,652	32,750	33,763	52,000
1778	28,511	138,500	17,000	
1779	84,615	37,589	35,000	40,770
1780	28,618	5,000	3,500	50,000
1781	50,236	31,000	3,200	
1782	2,730	7,300		
1783	38,610	3,000		

A glance at the columns will show the disturbing influence of the American War from 1776 to 1783, the decline for the year 1782 being the most noticeable. From 1777 to 1782 export of grain from Canada was practically forbidden.

For the year 1791 we are able to gather, from a table of the shipping outward from Quebec, a list of the vessels engaged in the West India trade, with their size and cargoes. The list is found in the Canadian Archives Report, 1882-83-84, under the heading: Reports, Outwards of Vessels from Quebec during the Season of Navigation from 10th June to 18th November, 1791: For Grenada, the Friends, 155 tons.

> 110 barrels flour, 185 quintals biscuit, 896 bushels oats in puncheons, 8,391 barrels staves, and 1,115 heading, 1,087 pine boards 15 feet, 2,000 pine boards 10 feet, 4,000 hoops, 44 tierces and 26 barrels salmon.

For Jamaica, the Bell, 237 tons:

> 1,523 barrels flour, 60 quintals biscuit in puncheons, 20 puncheons oats, 19 peas, 10 puncheons heading, 1,588 butt staves, 3,840 box staves, 13,000 hoops, 58 casks dry cod.

For Barbadoes, the Catiche, 80 tons:
22 tierces and one barrel salmon, 23 barrels herring, 2 barrels cod smalls, 1,000 boards, 2,000 hoops, 66 boards 12 feet, 20 barrels flour.

For Barbadoes, the General Wolfe, 204 tons:
42 barrels codfish, 10 tierces salmon, 10 barrels herring, 800 barrels flour, 1,100 bushels oats in bulk, 408 bushels in hogsheads, 11,500 staves, 2,400 pieces heading, 10,000 hoops, 30 cauldrons coal.

For Jamaica, the Peggy, 105 tons:
250 barrels flour, 13 puncheons biscuit, 2,000 white oak staves, 30 puncheons peas, 2,060 puncheons dressed staves, 14,000 hoops, 100 turkeys.

PREPARED PLACES FOR PREPARED PEOPLE.

"Seest thou a man diligent in his business? He shall stand before kings; he shall not stand before mean men."—Proverbs, 22nd chap., 29th verse.

I AM sure all members of "The Canadian Bankers' Association" felt rebuked when reading in the July number of the JOURNAL, that its issue had been unavoidably delayed owing to lack of material to fill it. Is there not something deeper here than is apparent at first thought, and does not the rebuke sink deeper the more thought it is given? In other countries, where banking is not only a business, but also a science and a profession, taking our friends to the south as an immediate example, no lack of interesting material is found in its banking journals, and the *Bankers' Magazine*, of New York, which is published monthly, has a special column reporting Canadian cases of interest to bankers, edited by a Canadian. This shows that the Americans take a deep interest in banking; possibly they are a little more interested in decisions affecting Canadian banks than Canadian bankers themselves.

Does the fault lie with us? I am of the opinion that it does. We Canadian bankers are not interested enough in our business to make our JOURNAL the success it should be, and we are not contributing enough to its pages to make it a success. It is true we read it, *i.e.*, some of us do, but the majority do not. I do not refer to those that are at the head of Canadian banks, but to those who should be the coming men, and who some day must fill the chief places in banking in Canada. They are not taking the interest in banking necessary to make them the able men "our fathers were," or no such complaint as the JOURNAL registered would ever be heard. In fact, the editor's trouble would be to choose the most instructive articles offered on banking, in which case this, my letter, would be amongst the rejected.

Does any one doubt that the majority of those in banks in Canada to-day do not possess three volumes on banking? Go through any city office which employs, say, 20 clerks or more,

and from my own experience I will vouch that not four in that number possess a library. This is more than strange, for if any subject should be of interest to one engaged in banking, it is that which treats of the occupation from which he derives his daily bread.

The average bank clerk of to-day does his routine work well, but apart from that and drawing his salary he knows very little of banking. How many that expect some day to fill a manager's chair are preparing themselves to fill it with credit to themselves and profit to the bank? Certainly they do not expect to be placed there through their knowledge of banking, but simply because it is due them for their length of service, and how often is it the case that when a man has been passed and repassed in the line of promotion, finally the bank is almost compelled to give him the position of manager. Not only has he kept asking for it, but no more suitable man in the service is available, even though he is not up to the standard. The bank well knows he is not qualified as he should be, but is forced to do something for him for his faithfulness in the service, and how often is the experience a costly one for the bank through the manager's lack of good judgment, and, what is fully as important, knowledge of his business from every business stand-point.

We have a superior class of bank managers in Canada to-day, but those who are entering and growing up in Canadian banks are not applying themselves to the study of banking and to the great principles that underlie it. No one doubts that just in so far as one thoroughly understands the principles of a science, he will succeed in that science. This applies to banking as well as other sciences: just as the young banker applies himself to understand the science of his business can he hope to meet with the success which knowledge brings. Ere I have reached this far a good many will have enquired: "Who is this wise man?" That is all right, but the truth is truth, however wise or foolish the man by whom it is expressed; and if you are one of those who have not given as much time to the study (not the practice) of banking as you know you should have given, then this truth is for you. And, as I wish to be perfectly frank, I will acknowledge that I do not "know it all," but am applying myself daily to acquiring a little more of the knowledge so useful to me in banking.

Now, if the average bank man will not by study voluntarily seek to make himself more useful to his bank, what is the remedy? To fire him? No, to train him. To become a physician one must qualify by passing certain prescribed examinations, and to pass such examinations, he must prepare himself by careful study and practical experience. It is the same in all professions, including, for example, accountancy. To obtain the coveted title of "Chartered Accountant," one must pass rigid examinations, annually becoming more severe. If banking is to be classed as a profession some such standard of qualification must be raised. Like all economic laws, strict in exacting what they demand, our profession will degenerate, through not using our facilities for acquiring knowledge. The degeneracy may be slow but none the less sure. Let us hope we will avoid it by taking care to-day, as, when the day of reckoning comes, if we are found wanting, we shall surely pay the penalty, and we all only too well know what a day of reckoning is for banks.

If the standard of training and qualification is to be raised, who is to raise it? The banks themselves. To enter a bank one must have a good name and a fair education. Under ordinary conditions this is all that is necessary in any walk in life to begin with. When a junior enters the service of a bank, the bank should see to it that he is either given copies of the "Bank Act" and the "Bills of Exchange Act," with all the latest decisions affecting those acts, and the latest interpretation of their clauses, or he should be asked to buy them. He should be informed that his progress will depend altogether upon himself and the way his work is done—writing, neatness, punctuality, manner and despatch being all taken into consideration. He should be told by his manager that these will all be watched carefully, but, in addition, that his progress will also be determined by the progress he makes in the study of his business.

It should be an easy matter for the banks to have examination papers prepared each year for its juniors on the "Bank Act" and the "Bills of Exchange Act." These examination papers could be sent to the head office along with a report on the officers writing, from the manager. By the answers given, the bank would be able to judge of the juniors' qualifications and progress, and by the manager's report as to their character and general proficiency. The head office officials will then be in a position

to know without doubt, guess-work, or mere opinion, who really are their best juniors. The examinations would, of course, be under the managers of the branches, and the bank would depend upon them to see that no assistance of any kind was given to those writing. This would be a matter of honour.

For the ledger-keepers a higher standard would be required, including a paper on book-keeping of an advanced nature, and possibly two or three other subjects which the bank would deem useful and necessary for a successful ledger-keeper.

Advance the examinations through the different posts until the accountant is reached, who should be examined on all subjects relative to banking, office-management, system, commercial law, the last named subject embracing the different acts affecting companies, partnerships, the "Bank Act," the "Bills of Exchange Act," etc., and such other matters as would be helpful to a first class accountant. It must be kept in mind that the higher the standard—the more strict the requirements—the better will be the result. In addition to the above, have all the officers "trained" to take securities, draw up liens, and otherwise use the different regular forms of the bank before they are allowed to do so for the bank in cases where actual loans are being made. This is most important.

To be brief, train one and all in every point relative to banking, so that thorough and self-reliant men will occupy every post.

It cannot be expected that those entering banks will learn all they should if they are left to their own devices. Where one will apply himself, a score will not. I know branch accountants who have never read the "Bank Act," yet they expect to make a success of their business, which means that without proper knowledge they would accept a position of great responsibility. If they make a mess of it, who is to blame? The bank will be the loser; there is no doubt about that part of it, even if the blame (which after all will do nothing towards remedying the loss) is all borne by the manager.

If the foregoing suggestion was placed in actual working, what result would follow? What good would be done? What evils averted? That is all answered by the men themselves. Instead of an uneducated class of bankers, trained and tested men would be in every position in the bank, from the juniors to the

accountant. Does it not follow that the student of banking and of business in general, will, as a manager, take up the higher studies of banking theory, political economy and finance, as presented in the best works along those lines, keeping himself posted on what great bankers are both thinking and doing.

Is it not self apparent that the bank with the best trained men will have the greatest success, and will be establishing itself on a rock which in time of trial will prove that its affairs have been conducted on sound banking principles inculcated in the minds of its staff from their youth up? Such a training will strengthen the confidence of its customers, and the public at large will speak of a bank so manned as a sound institution. Its stock will be in demand as a safe investment.

It is a saying that banks are so conservative that they are slow to accept any new idea or method which has not been part and parcel of itself from its very inception. This idea is altogether erroneous, as banks are most progressive. Compare the position of the banks to-day with that of fifteen years ago and the growth is simply marvellous. The banks have been carrying on an active campaign for savings deposits, and the prosperity which the country has been enjoying has materially strengthened their hands in getting deposits. Wealth has been accumulating fast. The odd dollars throughout the country are at work, and the credit is due to the banks. System in most banks is reduced to a nicety, and the affairs of our banks are conducted in the most business-like manner. The acme of perfection has not yet been reached, however, as the banks yearly make changes in their policy which only experience has taught them. Why not do something to help the men upon whom the success of the bank will in the future depend? Why not do something for the staff to help them earn and get more actual money through their giving the bank better value? Let all the banks help to improve the standard of the Canadian bank clerk. Make this part of the policy of the banks.

All who read this article must know that the statements made are true, and I am sure they must realize the necessity of training their men. If amongst those who read it are found any who by their word can say "we must do something," and whose word thus given will mean that some bank will place the idea suggested in practice, it will be a means of insuring their

bank's future, when they, the present head men are no more. Let us see how they will take this matter to heart and act. I will go as far as to say that, if some such course as suggested is followed, it will be of more value to the stability of the banks than the addition of a large sum to their reserves, and of greater ultimate worth to shareholders than an increased dividend. To depositors it will afford more protection than any kind of legislation.

H. C. ANDERSON.

AN ACT TO AMEND THE BANK ACT.

(*Assented to 20th July*, 1908.)

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section 61 of the Bank Act, chapter 29 of the Revised Statutes, 1906, is repealed, and the following is substituted therefor:—

"61. The bank may issue and re-issue its notes payable to bearer on demand and intended for circulation: Provided that,

"(*a*) the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes; and,

"(*b*) if, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinafter provided for, it shall not issue or re-issue any of its notes until authorized by the Treasury Board so to do.

"2. No such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars.

"3. The total amount of such notes in circulation at any time shall not exceed the amount of the unimpaired paid-up capital of the bank: Provided that, during the usual season of moving the crops, that is to say, from and including the first day of October in any year to and including the thirty-first day of January next ensuing, in addition to the said amount of notes hereinbefore authorized to be issued for circulation, the bank may issue its notes, to an amount not exceeding fifteen per centum of the combined unimpaired paid-up capital and reserve or rest fund of the bank as stated in the statutory monthly return made by the bank to the Minister for the month immediately preceding that in which the additional amount is issued.

"4. Whenever, under the authority of the proviso to the next preceding subsection of this section, the issue of an additional amount of notes of the bank has been made, the general

manager, or other chief executive officer of the bank for the time being, shall forthwith give notice thereof by registered letter addressed to the Minister and to the president of the Canadian Bankers' Association.

"5. While its notes in circulation are in excess of the amount of its unimpaired paid-up capital, the bank shall pay interest to the Minister at such rate, not exceeding five per centum per annum, as is fixed by the Governor in Council, on the amount of its notes in circulation in excess from day to day; and the interest so paid shall form part of the Consolidated Revenue Fund of Canada.

"6. A return shall be made and sent by the bank to the Minister showing the amount of its notes in circulation for each juridical day during any month in which any amount of notes in excess as aforesaid has been issued or is outstanding.

"7. Such return shall be made up and sent within the first fifteen days of the month next after that in which any such amount in excess has been issued or is outstanding, and shall be accompanied by declarations in the form prescribed in schedule D to this Act, and shall be signed by the persons required to sign the monthly returns made under section 112 of this Act.

"8. The provisions of section 153 of this Act shall apply to the return mentioned in the next preceding subsection.

"9. Notwithstanding anything in this section hereinbefore contained, the total amount of such notes of the Bank of British North America in circulation at any time shall not exceed seventy-five per centum of the unimpaired paid-up capital of the bank: Provided that,—

"(*a*) the bank may issue its notes in excess of the said seventy-five per centum upon depositing with the Minister, in respect of the excess, in cash or bonds of the Dominion of Canada, an amount equal to the excess; and the cash or bonds so deposited shall, in the event of the suspension of the bank, be available by the Minister for the redemption of the notes issued in excess as aforesaid; and

"(*b*) the total amount of such notes of the bank in circulation at any time shall not, except as in paragraph

(*c*) of this subsection authorized, exceed its unimpaired paid-up capital;

" (*c*) the Bank may, during the said season of moving of crops, in addition to the circulation of its notes hereinbefore in this subsection authorized, issue its notes to an amount not exceeding ten per centum of the combined unimpaired paid-up capital and reserve or rest fund of the bank as stated in the statutory return made by the bank for the month immediately preceding that in which the said additional amount is issued; and the said additional amount shall be otherwise subject to all the provisions of this section respecting circulation in addition to or in excess of the unimpaired paid-up capital permitted to other banks.

" 10. All notes issued or re-issued by any bank, and now in circulation, which are for a sum less than five dollars, or for a sum which is not a multiple of five dollars, shall be called in and cancelled as soon as practicable."

2. The following section is hereby inserted immediately after section 147 of the said Act:—

" 147A. Every bank which neglects to make and send to the Minister within the first fifteen days of the month next thereafter a return showing the amount of its notes in circulation for each juridical day during any month in the usual season of moving the crops, that is to say, from and including the first day of October in any year to and including the thirty-first day of January next ensuing, in which any amount of its notes in excess of the amount of the unimpaired paid-up capital of the bank has been issued or is outstanding, and signed in the manner and by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return."

QUESTIONS ON POINTS OF PRACTICAL INTEREST.

QUESTION.—A gives to B a cheque made payable to B or bearer in payment of wages due. The cheque is stolen and transferred by the thief to C, who is an innocent holder for value. C forwards cheque to the bank upon which cheque is drawn for collection. Meanwhile B wires bank to stop payment as cheque has been stolen. The cheque on presentation is refused and duly protested. What are the rights of C? Can he recover from A?

ANSWER.—The innocent holder can recover from the drawer of cheque.

To the Editing Committee, Journal of the Canadian Bankers' Association, Toronto:

Please give your opinion on the following point by mail:—

QUESTION.—1. We receive a draft for collection from a bank, on a firm 18 miles from here, with instruction to protest if not accepted. We have no other means to get it accepted than by mail, and it would take at least three days to have an answer. We send the ordinary power of attorney to be signed and returned if they accept the draft, or the reason if they refuse. What shall we do, if we do not receive any answer from the drawees after the third day, or how long shall we wait? Are we obliged to send the notary to present the draft at the drawee's office 18 miles from here before protesting? Where should the draft be presented, if it is necessary to present it somewhere?

QUESTION.—2. We received a cheque through the Clearing House written (payable to order of A. B.) or bearer printed, but not struck off, the cheque is not endorsed by A. B., but endorsed by the bank sending it to us. Are we justifiable in returning the cheque to be endorsed by A. B.?

ANSWER.—1. If you do not receive a prompt answer, protest, or a waiver thereof is necessary to hold the drawer and endorsers.

To protest, the draft must be presented at drawee's domicile, but it may be mailed to a Notary Public, or Justice of the Peace

near there to present and protest. If it is necessary to send a notary on such a trip as this the custom of the banks has been to refer to the owner of the draft by mail or telegraph before incurring such an expense, and you should write and explain the circumstances on receipt of draft, so that you can have reply before the necessity to protest arises.

ANSWER.—2. Legally we think the cheque referred to is payable to bearer, but the intention of the drawer seems to have been that A. B. should endorse it, therefore, we believe you are justified in asking for such an endorsement, and we do not think the bank sending it to you should object to getting it for you.

QUESTION.—Will you do me the kindness to give me an expression of your opinion in writing in reference to the following clause:—

> "For deposit in the Bank of America, only, to the credit of John Jones & Company."

Do you consider this to be a restricted endorsement, and is this generally used by merchants or limited corporations, and do you consider this endorsement as absolutely limiting the payment of cheques and preventing any loss, should it accidentally come into improper hands?

ANSWER.—This is a restrictive endorsement, see Canadian Bankers' Association Rules Respecting Endorsement, Section 4.

This form is gradually being dropped as it necessitates a guarantee of endorsement before being cleared—the proper endorsement is "Pay to the order of the Bank of America, John Jones & Co."

QUESTION.—1. A firm in Boston draws on B at S, draft payable to the order of X Bank which has gone out of business, the draft is received by M Bank, accepted by B, payable at S Bank. M Bank presents it at S Bank, where B has his account and it is marked by them. M Bank then have B change "Order" to "Bearer," and initial the change and send draft to S Bank for deposit. S Bank decline to pay the item as changed and an officer of M Bank supplies the endorsement of X Bank per his personal signature which S Bank is satisfied with and pays the item.

(a) Was S Bank justified in refusing to pay this item in the first place? (Bills of Exchange, Section 63.)

(b) Was officer of M Bank outside his rights in supplying endorsement of X Bank under the circumstances?

2. X Bank goes out of business and the depositors are notified by X Bank that their business has been taken over by Z Bank, "and your account has been transferred to them." "Please call and have your pass-book exchanged as soon as possible."

Can Z Bank refuse to pay a depositor unless he gives them a cheque on X Bank transferring his account to them and another cheque on them (Z Bank) to withdraw his deposit? Or is a cheque on either Z Bank or X Bank sufficient? If so, which?

ANSWER.—1. (a) S Bank need not pay a bill that has been altered after they certified it. (b) If the drawer of the bill sent it to M Bank for collection and the acceptor had already agreed that it should be paid to bearer, the officer was probably within his rights in carrying out the intention of all parties to the bill.

2. If depositor wants to draw his money through (Z?) Bank, he must comply with whatever regulation they see fit to make.

QUESTION.—"An item held by a bank is presented at the bank at which it is payable and is marked "Good" and initialed by the manager. It is not charged to the account of the party or initialed by the ledger-keeper—it is not accepted in the usual way so that the account will not appear overdrawn. Is there any doubt of a bank accepting a bill in this manner not being held liable for it, or should the bank holding the item insist on it being accepted in the usual way?"

ANSWER.—The manager's acceptance would undoubtedly bind the bank.

The holder if he suspects any irregularity can at once present cheque for payment.

QUESTION.—A draws a cheque on a bank in which he has no account and sends the cheque to the payee who lives in another city. Before the cheque is presented A calls at the bank and states that he has issued the cheque and wishes to deposit

the amount, but the bank refuses to accept the deposit. Is the bank justified in refusing to take the amount on deposit?

Supposing that the cheque is received for collection by another bank in the same town, the drawer makes enquiries, learns that the cheque is there and tenders the amount to the collecting bank, before the cheque has been presented for payment to the bank on which it is drawn. Can the collecting bank refuse to accept the amount?

ANSWER.—Bank is perfectly justified in refusing a deposit from anyone who does not keep an account there, and the collecting bank is only bound to take payment from the drawee, though in this case, it might be expedient to receive payment from drawer and notify the bank from which they received it of the circumstances.

QUESTION.—Bank A presents to Bank B a cheque payable to the order of Brown & Robinson. The cheque is endorsed with a stamp "Brown & Robinson," per Thos. Brown; the name Thos. Brown being in writing. The payees are unknown to Bank B, who asks Bank A to guarantee the endorsement. Bank A refuses. Should not the endorsement indicate Thos. Brown's authority to sign, and failing that has not Bank A the right to have the endorsement guaranteed by Bank B?

ANSWER.—See Bills of Exchange Act, Sec. 50. While this law gives the drawee the right to recover money paid on an unauthorized endorsement, it does not do away with its right to be provided with proof of the authority of the endorser to sign for the firm and the presenting bank should guarantee if asked to. The endorsement should indicate Brown's authority to sign, but even then Bank A should guarantee if asked to.

QUESTION.—1. Section 32, subsection c.2 of the Bills of Exchange Act reads: "Where a bill is payable to order, the "payee or endorsee is wrongly designated, or his name is mis-"spelt, he may endorse the bill as therein described, adding his "proper signature, or he may endorse by his own proper sig-"nature."

Would you kindly give reason why it is customary for banks to ask other banks clearing to guarantee endorsements which are misspelt or wrongly designated?

2. If a cheque is payable to Mrs. W. Brown, and Mrs. Brown's name is Helen—what would you consider the correct endorsement? Would Helen Brown suffice? And if this cheque is cleared, would it be necessary for clearing bank to guarantee?

ANSWER.—1. The paying bank should satisfy themselves as to payee's endorsement, and if any irregularity appears, are quite within their rights in asking for a guarantee.

2. The endorsement should in some way identify Helen Brown with Mrs. W. Brown. She could sign Helen Brown, wife of W. Brown, or Mrs. W. Brown, Helen Brown.

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EDITORIAL NOTES

We commend to the attention of our readers an article by Mr. Victor E. Mitchell, of the Montreal Bar, which will prove very interesting to all of our readers who wish to possess in succinct shape the story of the now celebrated case with which Mr. Mitchell's article deals. A quarrel between the Dominion Coal Co. and the Dominion Iron & Steel Co. resulted in long drawn out litigation, which those interested on both sides followed with a tenacity of purpose not quite pleasing to their shareholders, but of exceeding interest to on-lookers. The judgment will serve for many years to come

A Celebrated Case.

as a lesson to litigants seeking in England for an interpretation of the Law of Contract. Possibly in no country in the world can be found such perfect reverence and respect for the performance of promises and for adhesion to the terms of specific agreements. The strict interpretation of the Law of Contract prevails to such an extent that it is quite possible, in the event of any individual undertaking to convey another to the moon, the sober-minded law lords of the Privy Council would decree that if the contract were found impossible of fulfilment, the contractor would have to pay damages for any disappointment and loss occasioned to the would-be passenger.

The judgment rendered in this celebrated case forms a part of Mr. Mitchell's admirable sketch of the contract, quarrel, litigation, and resultant verdict for the Coal Company.

Express Companies.

Mr. W. F. Chipman, whose contributions to the JOURNAL are always instructive and interesting, sets forth in an article appearing in this number "Express Companies and the Public," the attempt being made to have the forms of contract used by express companies put upon a common basis throughout the entire Dominion. Mr. Chipman explains very clearly how shipper and carrier stand with regard to one another under present circumstances. It is seldom that a business question of such general interest is brought before the Board of Railway Commissioners; and the drawing of the form of contract to be used by carriers and express companies in dealing with the public is a matter of concern to almost everybody. The public interest in the present condition of affairs should lead to a change in the form of contract, as the contract forms of express companies now in use are, as Mr. Chipman says, virtually "a coercion of the public," since at the time of the contract the shipper is not dealing with a party who will come to fair terms with him, but with an agent who is unable to change the terms which his principal has put into his hands. One thing ought to be made clear and distinct for the sake of the public, viz.: The direct responsibility of the agent is the indirect responsibility of the principal.

Mr. H. M. P. Eckardt, in this number of the JOURNAL, reviews the results of a year's trial of the Oklahoma law for the protection of depositors in banks. Already efforts are being made to amend the law provided for the guaranty of bank deposits, because the sound banks, parties to the scheme of protection, are becoming uneasy at the prospect of heavy assessment upon them for their liability under the guaranty.

Deposit Guaranty.

Preceding the visit of the National Monetary Commission appointed by the United States to study the banking systems of other countries, Canada has recently been honoured by a visit from Prof. Joseph French Johnson, who is a teacher of Political Economy in New York University, and also Dean of the School of Commerce, Accounts and Finance. Prof. Johnson has met several of the leading bankers of the Dominion, and as the result of his study of our banking methods is to appear in the form of a report to the United States Government, Canadian bankers may shortly be favoured with the views of one of the best exponents of the science of money on this side of the Atlantic. J. T. P. K.

A Distinguished Visitor.

THE STEEL-COAL CASE.

THE case of the Dominion Iron and Steel Company against the Dominion Coal Company, as far as the main questions at issue between the two Companies are concerned, has been happily and definitely settled by the judgment of the Privy Council. The adjustment of the damages awarded to the Steel Company is, at the time of writing, under discussion between the officials of the two Companies, and there is no reason to doubt that, before this article is published, the damages will have been adjusted on a basis satisfactory and equitable to both parties concerned.

This celebrated case is, from a strictly legal standpoint, of little interest. The legal questions involved related (a) to the interpretation of certain clauses in the contract providing for a supply of coal to the Steel Company, and (b) to the right of the Steel Company to demand specific performance of the contract, and were decided by the Privy Council upon general principles of law applicable to all mercantile contracts. Their Lordships of the Privy Council in rendering judgment did not find it necessary to discuss even one of the numerous authorities cited by Counsel at the hearing. The judgments themselves have added little, if anything, to the jurisprudence of the country. But, in view of the large amount involved and the fact that practically the existence of the Steel Company depended upon the result, the case is of considerable importance. It has excited the liveliest interest throughout Canada, and its progress has been closely followed, not only by those directly interested in the two Companies concerned, but by bankers, merchants and others who realized the very serious consequences which would undoubtedly have followed a judgment adverse to the Steel Company. It is on account of this general interest I have, at the request of the editor, compiled from the records and judgments an account of what is popularly known as the "Steel-Coal Case."

The Dominion Coal Company was incorporated by the Legislature of Nova Scotia in 1893 for the purpose of consolidat-

ing certain mining companies operating coal mines in Cape Breton County, south of Sydney Harbour and its vicinity.

Some years after the Company had been actively at work, the leading members or directors of the corporation reached the conclusion that the establishment of large iron and steel works in the vicinity of their mines would be advantageous as affording a steady market for their output, especially in the winter months when shipment of coal to their chief markets on the St. Lawrence was impossible, and would also be profitable as an industrial enterprise.

As a consequence, the Dominion Iron and Steel Company, with a large capital, was organized in 1899, incorporated by the Legislature of Nova Scotia, and many of the directors and leading promoters of the Steel Company were also directors and large shareholders of the Coal Company.

Before entering upon this new enterprise, the coal of the Dominion Coal Company was carefully analysed and found suitable for the manufacture of steel—that is, it contained a sufficiently small percentage of sulphur and ash to make it conform to the necessary conditions of iron and steel production.

After its organization, the Steel Company proceeded to erect, at an expenditure of many millions of dollars, large works for the manufacture of steel at Sydney, and commenced its operations in 1901. Prior to this, however, an agreement was made between the two companies on the 30th of June, 1899, in which provision was made for the supply by the Coal Company of such quantity of coal as the Steel Company should demand, without limit, and by this agreement an option was further given to the Steel Company to lease the Coal Company's property for a rental which would pay the annual debenture and preferred stock charges of the Coal Company's undertaking and six per cent. on its common stock.

The price fixed by this contract was $1.20 per ton. The Steel Company exercised the option given to it in the agreement, and took over the Coal Company's property under a lease dated June 12th, 1902, the consideration being the payment of a yearly rental of $1,600,000, and a royalty of fifteen cents per ton on all coal mined exceeding 3,500,000 tons. This lease was duly ratified and confirmed by an Act of the Legislature of Nova

Scotia passed on April 11th, 1903 (3 Edward VII, N.S., Chapter 188).

The Steel Company continued to operate the properties of the Coal Company under the lease for about a year and four months, when it was determined by the directors of both Companies, whose personnel was largely the same, that it would be advisable in the interests of the two Companies that the lease should terminate and the Coal Company resume full control of its own property. Negotiations to this end were then had between the officials of the two Companies, and on October 20th, 1903, the two following contracts were entered into between them:—

1. A contract whereby the Steel Company agreed to terminate the lease and reconveyed to the Steel Company the property and assets held under the lease as therein described, for and in consideration of the payment to it by the Coal Company of the sum of $2,635,000, out of which the Steel Company undertook to pay the Coal Company the sum of $655,000, for which amount the Coal Company then held the notes of the Steel Company;

2. A contract providing for the supply of coal to the Steel Company to meet the requirements of its works in the future.

These two contracts were also ratified by an Act of the Legislature of Nova Scotia, passed on the 11th day of December, 1903 (3 and 4 Edward VII, N.S., Chapter 156). The interpretation of certain clauses of this contract and the rights of the parties thereunder form the basis of the suit.

In 1899 the Steel Company made an issue of $8,000,000 First Mortgage Bonds, and by the Deed of Trust securing same executed the first of July, 1899, the Steel Company assigned to the National Trust Company, as Trustee for the Bondholders, all its present and future assets, including the contract for the purchase of coal entered into with the Dominion Coal Company on the 30th of June, 1899, and the right or option to lease the property of the Coal Company, as provided in said contract. The lease when executed became subject to the mortgage in favour of the National Trust Company under the Deed of Trust, and the Act 3 and 4 Edward VII, N.S., Chapter 156, authorized the Trust Company to execute and register any release or consent which was requisite or necessary to give effect to the pro-

visions of the agreement dated October 20th, 1903, between the two Companies cancelling the lease. The concurrent agreement executed the same day providing for the supply of coal to the Steel Company gave the Steel Company the right to assign this agreement or contract to the Trustees of any mortgage securing Bonds issued or to be issued by the Steel Company subject to the terms and conditions of the agreement. On the 20th of October a formal transfer and conveyance of this contract was made by the Steel Company to the National Trust Company, as Trustee under the Deed of Trust, dated July 1st, 1899, and notice thereof was formally given to the Coal Company by the Trustee on October 30th, 1903.

All these agreements and documents were deposited in escrow with The Royal Trust Company until the Legislature of the Province of Nova Scotia had passed an Act ratifying and confirming the same, and this Act was passed, as mentioned above, on the 11th of December, 1903.

It will, therefore, be seen that the National Trust Company, as Trustee for the Bondholders, had a very real interest in the contract in controversy, and was properly made a co-plaintiff with the Steel Company.

It is quite clear that at the time this contract was entered into, each Company was well acquainted with the business of the other, its needs and its capacities, the mode in which it was carried on, and the character of the coal won in the pits theretofore worked and operated at different periods by both Companies.

It is now necessary to state briefly the provisions of the contract which gave rise to the suit, and I do not think that I can do better than quote the very concise and luminous summary found in the judgment of the Privy Council. Lord Atkinson, in rendering judgment, said:—

"The agreement of the 20th October, 1903, recited that the "Steel Company had erected steel works at Sydney and was "operating the same, and that the parties had agreed that the "lease of the mines to the Steel Company should be cancelled, "that the Coal Company should re-enter the premises leased, "and that the coal thenceforth to be supplied to the Steel Com- "pany should be supplied on the terms and conditions therein-

"after contained, and it then set forth in 14 paragraphs in great "detail what the terms and conditions were. The most import- "ant of these provisions are the following:—

"(1) That the Coal Company, from its mines in Cape "Breton County, other than those lying north or west of "Sydney Harbor, will supply on the terms and conditions "hereinafter stated to the Steel Company all the Coal that "the Steel Company may require for use in its own works, "as hereinafter described. The word 'works' shall mean:

"Firstly.—The following works now or hereafter con- "stituting the Steel Company's steel and iron plant at "Sydney or used in connection therewith, with any addi- "tions thereto and substitutions therefor of a like character "which the Steel Company may deem requisite at Sydney "or east or south of Sydney Harbor within ten miles of "Sydney town:

"(a) The blast furnaces.

"(b) The coking ovens, used for making coke for the "said furnaces.

"(c) The steel furnaces.

"(d) The rolling mills for manufacturing rails, rail- "way fish or angle plates, other plates for joining rails, "structural steel, iron and steel bars, plates and rolled rods "for wire manufacturers, and providing rolling mill pro- "ducts analogous to any of those above named, excepting "always rails, fish plates, and plates for joining rails be "hereafter used in commerce in lieu of the products above "named to such an extent as to reduce the demand for the "same then for manufacturing such analogous products of "not more finished character, and also for manufacturing "such fundamental raw material as billets, slabs or blooms.

"(e) Or in the event of the articles or materials men- "tioned in paragraph (d) being hereafter produced by "mills other than rolling mills, then such other mills.

"Provided always, that all the products of said steel "furnaces and mills shall be made from iron produced by "such blast furnaces, with the addition only of the spiegal "iron, ferromanganese, raw ore, scrap steel, scrap iron, "and materials other than iron and steel necessary to be

" added to the pig iron product of such blast furnaces in " order to make steel, and shall be either for the use of the " Steel Company in the construction and repair of its plant " or for purposes of sale.

" (f) Incidentally to the foregoing, the necessary gas " producers, kilns, ovens, foundries, electrical machinery, " hoisting engines and repair shops, but for use only in fur- " nishing material for the construction, repair and opera- " tion of such furnaces, coking ovens and mills, and for " lighting and heating the said works.

" Secondly.—The mines and quarries which the Com- " pany may operate at Sydney or elsewhere in Canada and " in Newfoundland for the purpose of supplying material " other than coal and products of coal to the said blast fur- " naces and steel and iron plant as above described.

" Thirdly,—

" (a) The steam vessels owned or hired by the Steel " Company on not less than three months' time charter and " operated for its own requirements, and

" (b) the switching engines at Sydney and at its mines " and quarries which the Steel Company may require in- " cidental to the operation of its said business as above " described.

" Provided always that the Coal Company notwith- " standing anything in this contract contained shall not be " obliged to supply in any one month a quantity of coal " exceeding the quantity required to furnish the coal or " coke necessary to operate blast furnaces of a capacity not " exceeding that of the Steel Company's present four blast " furnaces, and to operate the steel furnaces and mills with " incidental plant as above described engaged in manufac- " turing the product of such four blast furnaces or their " equivalent with the mines, quarries, vessels and engines " operated incidentally thereto.

" (3) All coal furnished shall be freshly mined, and " of the grade known as 'run of mine,' reasonably free from " stone and shale, and shall be supplied from such seams " then being worked by the Coal Company as the Steel " Company may designate. The Coal Company may, after " the expiry of four years from the date of this agreement,

"supply slack coal of the same specification as to quality as "above if suitable for use in steel making and for blast "furnace coke, and may also supply slack coal for other "purposes for which it can be used without disadvantage "by the Steel Company. In construing the above clause "the use of slack coal shall not be deemed to be a disad- "vantage merely because the use thereof necessitates changes "in the grate bars of the Steel Company. 'Suitable' shall "be construed to mean that the slack coal so supplied when "properly washed by the Steel Company shall not contain "a percentum of impurities, to wit, ash and sulphur, ap- "preciably greater than the percentum of impurities in the "same coal of 'run of mine' grade when crushed and "washed in the same manner.

"All coal supplied hereunder, that requires to be "washed shall be washed by the Steel Company, and should "the Steel Company establish and operate a coal-washing "plant between the point or origin of such coal and the "Steel Company's blast furnaces, the Coal Company shall, "at the actual cost thereof, allow such coal to be washed in "transit.

"(4) The Steel Company further agrees with the "Coal Company that so long as the Coal Company shall be "willing and ready to supply coal for the use of the Steel "Company, all coal required by the latter shall be pur- "chased from the Coal Company to the amount agreed to "be supplied by the Coal Company under the terms of this "contract.

"(5) The Steel Company shall from time to time "give notice of not less than three months to the Coal Com- "pany of its requirements during any coming month, and "if such requirements are at any time materially in ex- "cess of the requirements existing at the time such notices "are given, then the Coal Company shall use due diligence "in preparing to furnish the increased demand, but shall "in any event be prepared to furnish the increased de- "mand, within 12 months from the date of such notice."

After the contract was signed, the Steel Company, which was then in active operation, designated the Phelan Seam as the

seam from which its coal was to be taken and obtained its coal under the contract, and as the operations of the Steel Company became larger, a greater amount of coal was demanded, and regular notices were given of the advance requirements and for some time they were met. But early in 1905, notices were given of a large increase in 1906, owing to the operation of a third blast furnace, and these demands the Coal Company found it difficult to meet without curtailing its supply to other customers who were purchasing coal at more remunerative prices.

When the contract of October 20th, 1903, was signed, the Coal Company was operating its pits, Nos. 1, 2, 3, 4 and 5 on the Phelan Seam; No. 7 on the Hub Seam, and 8 and 9 on the Harbour Seam; and in 1905, No. 10 on the Emery Seam was opened. In order to meet the increasing demands of the Steel Company, the Coal Company proceeded to open up another pit, as they believed, on the Phelan seam. It was located some distance east of the other pits of the Phelan seam, and on the other side of Glace Bay Basin, and was called Dominion No. 6. It began to put out coal about July, 1905, and some of this was sent to the Steel Company.

All the coal sent to the Steel Company was subjected every day to analysis by a staff of chemists, because no coal can be used for the making of coke which absorbs more than seventy per cent. of the whole coal consumed in the enterprise, and which contains a percentage of sulphur larger than 2.75 in an unwashed state. This is the limit and constitutes the danger point. Most of the coal supplied, after washing, averaged from 1.3 to 1.6 per cent. in sulphur. Eminent experts in steel-making from both Great Britain and the United States were called, and the substance of their evidence, which was very full and satisfactory, was that in Great Britain iron is made from coke with an average of 1 per cent. of sulphur, though there is one iron and steel works which uses coal and coke running as high as 1.5 per cent. in sulphur. The American expert said that in the United States the percentage of sulphur in the coal and coke was a shade below one. Both thought that 1.6 would constitute the danger point, and they explained very clearly the consequences of a higher percentage of sulphur which would make the production of steel and iron commercially impossible. Mr. Jones, the manager of the Steel Company, and Mr. Scott, the chief

analyst, fixed the danger limit in the Sydney works at 2.75 for coal unwashed, but most coal supplied was well below this limit.

When the coal from No. 6 reached the Steel Works, it was found by analysis to contain a much higher degree of sulphur than could be used for the manufacture of steel, and it was rejected by the Steel Company, and in many instances taken back by the Coal Company, and acknowledged by one of the directors of the Coal Company to be unfit for use by the Steel Company.

It is fitting also that a word should be said in respect of the pit known as No. 4. The working in the west side of this pit produced excellent coal for iron making, but the working on the east side led directly towards that part of the seam in which No. 6 is situated. The geologists who were examined said that the workings on the west slope of No. 6 and the workings on the east slope of No. 4, which are less than three miles apart, will, if continued, meet—that is, they are working towards each other. The coal produced from this east working of No. 4 is also too large in sulphur for iron making.

A long correspondence between the managers of the two companies was put in evidence, and also some letters between directors of the two companies. The manager of the Steel Company not infrequently notified the manager of the Coal Company of the delivery of certain cars of coal which were not suitable for their work. These cars were in some instances taken back by the Coal Company and in others declined on the ground that they came from other pits than No. 6. In August, 1905, a sort of *modus vivendi* was agreed to between the two companies, which may best be found in a letter addressed to Mr. F. P. Jones (then sales agent, but now general manager of the Steel Company), to Mr. Duggau, manager of the Coal Company, dated August 16th, 1905. He says:—

"In order to meet you in every possible way we will agree, "without prejudice to any of our rights under the contract, "and until further notice, to accept seventy-five tons of this "coal every day, provided you will have it carded No. 6 coal so "that there will be no chance of our getting it mixed in with "the coal we use in our coke ovens and gas producers."

This was agreed to by the Coal Company without prejudice to its rights under the contract.

This arrangement continued for some months and the chief

difficulty between the two companies henceforth was the quantity delivered. The Coal Company in 1905-06 never quite reached the demand of the Steel Company in point of quantity, except in the winter months.

In March, 1905, the Steel Company gave the Coal Company notice that from the first of April, 1906, they would require to be supplied with 80,000 tons of coal per month. No objection was taken to this demand, and it is not disputed that, during the eight months succeeding that date the Coal Company obtained from the Phelan seam coal suitable for all the Steel Company's purposes vastly in excess of this amount. It was proved at the trial and found by the judge that the Coal Company had on many occasions failed to deliver the amount of coal required, and that the Steel Company had, in consequence, been obliged to purchase coal at a higher price elsewhere to keep their works going.

Mr. Jones, manager of the Steel Company, gave evidence in regard to the short deliveries during the months of August, September and October, 1906, and the refusal of the Coal Company to furnish metallurgical coal suitable for the requirements of the works of the Steel Company. He says that he had interviews with Mr. Warren, Mr. Duggan, Mr. Jack Ross and Mr. J. Reid Wilson.

The following extracts from his testimony are interesting:

"Q. Will you give us your best recollections of the interviews with those gentlemen and what your communications were with them, and what their replies were? A. To the best of my recollection when I spoke to Mr. Warren, he said I had instructions to give you so much coal and until I get instructions I cannot give you any more. The quantity was not what we were entitled to get. With Mr. Jack Ross I took the question up at various times, and he said they would not give us the coal I claimed we were entitled to. With Mr. Duggan I had numerous interviews, both over the 'phone and at his house and other places, and he stated that he was doing the best he could, but that he himself was unable to give us the coal I was claiming and pressing him for.

"Q. Did Mr. Duggan indicate in any way what he meant

"by saying that he could not give you the supply you were re-
"quiring? A. At one conversation he did.

"Q. Tell us what is was? A. He said to me at his boat-
"house that there was no use for my pressing him further for
"coal, that he would like to give it to us, but Mr. James Ross had
"given him instructions that he was not to give us a pound of
"coal that could be shipped away, and further that he was go-
"ing to stay there and see that his instructions were carried
"out.

"Q. Tell us of your conversation with Mr. Wilson, what it
"was? A. I complained to him about the coal, and he said
"that he could do nothing in the matter. He said we had sent
"to him an unreasonable bill for $20,000 for coal purchased out-
"side, and that it was an outrage to send such a bill. He also
"said that the contract was burdensome to the Coal Company,
"and that we should ease them in every possible way, and he
"criticized our past actions in a very hostile manner.

"Mr. J. J. Ritchie. Is that evidence? In my opinion it
"was hostile.

"Q. Was that the substance of the interview with Mr. Wil-
"son, or is there anything more that you can recollect? A. He
"said he could do nothing in the matter when I appealed to him
"to take the coal away.

"Q. And about your interview with Mr. Jack Ross, tell us
"what that was ? A. We were on the train which passed out
"of the Assembly Yard, and we both got off there and met Mr.
"Work, the superintendent of the coke ovens, and a gentleman
"from the Dominion Coal Company. I am not positive as to
"his name, the four of us looked at the coal together.

"Q. What conversation had you about it? A. Well, I
"stated that the coal was not according to contract, and Mr.
"Ross stated that it was fresh-mined Phelan seam coal. I stated
"that it was not free from stone or shale, and that we could not
"use it, that it was not any good to us. He said he did not think
"it had an unreasonable amount of stone and shale and that it
"was all right. I asked him where the coal came from and he
"repeated that it was fresh-mined Phelan seam coal. I asked
"him if it did not come from No. 6, and he would not reply to
"that question. It was raining at the time, and seeing that we
"could not have any discussion on the question or go into it at

"all, I said it was no use wasting time, and I went back to the "office and he went back to Sydney, I presume. That was the "end of the interview.

"Q. Mr. Wilson's position was this, and you will correct "me if I am wrong. Wilson said, well now this legal thing "whether you have to take that under the contract, we need not "discuss that—I would not give it to you if I was in charge— "is that about it? A. Yes, but that is not quite correct.

"Q. Where am I wrong? A. I will make it plain. The "sum and substance of the interview was this. The question "came up as to our rejecting that coal which we had done. Mr. "Wilson did not seem to have an opinion of that of which I "told you before. I don't think Mr. Wilson was prepared to "state definitely what course he thought was right. But what "he did impress and urge was this, as the eastern slope was bad, "that they had closed it down, and that Mr. Fergie assured him "that the western slope would get better to the deep and that in "a short time the whole question would cease to be a direct "issue, and what we wanted to do was to get together and get "along as we could now, and that in any event, even if they had "the right which he did not say they had, that he personally "would not ask us to take it or tender such coal as that. We "went on to discuss how in the meantime we could help them by "arranging to take some quantities of coal.

"Q. This is a correct statement of the position, is it not? "That while Mr. Wilson expressed himself as you have stated, "there was an express reservation as a legal question, as to "whether you were bound to take it, and it was agreed not to "discuss it. A. Mr. Wilson did not express himself on the "legal question."

No attempt was made to contradict this testimony. Mr. James Ross, Mr. Jack Ross, Mr. Duggan and Mr. Wilson were not called as witnesses.

By letter dated the 18th October, 1906, the manager of the Steel Company formally terminated the *modus vivendi* arranged in August, 1905, and the parties were thenceforth remitted to their legal rights.

Between the 1st and 9th of November, 1906, the Steel Company rejected as unfit for use in their works 153 cars of coal, *i.e.*, about 2,698 tons. Thereupon a lengthy correspondence took

place between the officials of the respective companies as to the rejection and return of this coal. At length, on the 8th November, 1906, the manager of the Steel Company wrote to the Coal Company the following letter:

"We are in receipt of your favor of November 7th, and note that you state that cars which we refused to accept contained coal as labelled, namely, Phelan seam, of run-of-mine grade, which has been carefully picked and in accordance with the contract. We beg to state that the coal contained an undue percentage of shale and slate and sulphur and is unsuitable for our requirements and is not in accordance with the contract. This certainly is a reason why we should not accept this coal.

"Referring to our letter of October 18th, in which we notified you that after October 31st we would not accept from you any coal excepting freshly mined run-of-mine coal from the Phelan seam, we beg to say that we certainly think you were aware of the quality of the coal we required for our uses on the plant, and now notify you that all coal you deliver to us must be freshly mined run-of-mine coal from the Phelan seam, and suitable for our purposes."

To this letter the Coal Company, on the 9th of November, replied as follows:

"In consequence of your peremptory refusal to accept the coal which we have furnished and have been ready and willing to furnish in accordance with the terms of our contract with you, dated 20th October, 1903, there is no course left open to us but to accept the necessary consequence of your action in this matter. Your conduct in refusing to accept delivery of coal furnished and to be furnished constitutes a clear repudiation on your part of your obligations under the contract, and renders further performance on our part impossible. We therefore formally notify you that the contract mentioned is at an end.

"I greatly regret your repudiation of a contract the nature of which has involved the expenditure of millions of money on our part, and we cannot understand your disregard, not only of our contract rights, but of the large interests necessarily affected by your action.

"You have also violated the contract by not returning our

cars and by purchasing coal from other parties in violation of the provisions of the contract.

"Our cars in the assembly yard loaded with coal furnished under the contract and rejected by you we will proceed at once to remove."

This was a notice of termination of the contract on the part of the Coal Company, on the ground that the Steel Company had committed a breach of the contract by refusing to receive coal tendered in accordance with the terms of the contract. The Steel Company claimed that they had made no breach of the contract because the coal tendered after November 1st, 1906, was not coal contemplated in the contract, or in accordance with its spirit and express provisions.

The Steel Company and the Trust Company accordingly instituted an action on the 8th December, 1906, and in their statement of claim, in addition to claiming damages under the several heads therein set forth in respect of the breaches of contract alleged to have been committed by the Coal Company, prayed (amongst other things) that it might be declared that, as against each of the plaintiffs, the Coal Company had no power to rescind the contract of the 20th October, 1903; that it be ordered to carry out the same; that it be restrained by injunction from carrying on any business until the said contract had been carried out, and that a receiver be appointed over its business in case it refused to carry out the same, or, in the alternative, in case the Court should be of opinion that the plaintiffs' remedy was for damages for loss of their contract, the plaintiffs claimed in respect thereof, $15,000,000 in addition to the damages under other heads.

To this action, the Coal Company pleaded:—

(a) That by the contract of 20th October, 1903, it agreed to supply coal, limited as to quantity by clause 1 of said contract and of the specification set out in clause 3, namely, coal freshly mined and of the grade known as 'run-of-mine,' reasonably free from stone and shale, to be supplied from such seams then being worked by the Coal Company as the Steel Company should designate;

(b) That the Steel Company designated the Phelan seam on the Coal Company's property as the seam from which it required the specified coal to be furnished;

(c) Between the 1st and 9th of November, 1906, the Steel Company repeatedly notified the Coal Company that it would not at any time accept freshly mined coal of the grade known as 'run-of-mine,' reasonably free from stone and shale and from the seam designated by it, unless such coal should, in the opinion of its officials, be suitable for the purposes to which the Steel Company desired to apply it; and that it would not accept performance of the said contract of October 20th, 1903, but required the Coal Company, in addition to performing the said contract, to submit to onerous terms and conditions as to suitability not contained therein, which the Coal Company declined to do, and which is the alleged breach complained of.

(d) On the 1st of November, 1906, and continuously thereafter up to and including the 9th day of November, 1906, the Coal Company was ready and willing and was in a position to deliver to the Steel Company all the coal it was entitled to under the said contract of October 20th, 1903; as well as such amount of coal over and above the amount to which the Steel Company was entitled, as would make the monthly supply of the Steel Company for November 80,000 tons, the whole quantity for which the Steel Company had given notice; and the Coal Company was ready and willing to make said deliveries in coal of the specification contained in the said contract of 20th October, 1903, and from the seam designated by the Steel Company, and the Coal Company was only prevented from carrying out the terms of the said contract by the absolute refusal of the Steel Company to adhere to the terms thereof.

(e) The Steel Company having repudiated the said contract of the 20th October, 1903, and having absolutely refused to be bound by the terms thereof, and having insisted upon adding to the said contract terms not contained therein as a condition of accepting the performance thereof by the Coal Company, the Coal Company notified the Steel Company that it accepted the Steel Company's repudiation of the said contract, and withdrew from the said contract.

The case was tried in the Supreme Court of Nova Scotia before Longley, Judge, without a jury, at a special sitting in July and August, 1907. The trial lasted three weeks. A very great number of witnesses were examined on both sides, and an enormous mass of evidence was given, including some hundreds

of exhibits. The Judge found that the following facts had been established by the evidence:—

(1) That the coal rejected was unfit for use by the Steel Company for its metallurgical purposes, owing to the large quantity of sulphur it contained;

(2) That it was not reasonably free from stone and shale.

(3) That over 90 per cent. of the coal required by the Steel Company was to be used for the different processes in the manufacture of steel (described in the evidence as metallurgical), and less than 10 per cent. for the generation of power;

(4) That coal which in its raw state contained more than 2.75 per cent. of sulphur, and after having been broken and washed, more than 1.7 per cent. was unfit for the former purposes, and could not be used without danger of injury to the manufactured products;

(5) That the Coal Company produced in the months of August, September, October and November from the pits on the designated seam other than No. 6 coal fit for metallurgical purposes, largely in excess of the requirements of the Steel Company.

Owing to the nature of the relief claimed, the main question of law to be determined was whether the rejection and return by the Steel Company of the coal tendered to it, coupled with the demands it made in respect to the future supply, justified the Coal Company's repudiation of the contract.

To answer this question, it was necessary to determine what, on the true construction of the contract, the meaning of certain words or phrases contained in it, namely, (1) The words "all the coal that the Steel Company may require for use in its own works as hereinafter described" occurring in the first few lines of the first paragraph of the contract; and (2) the words "reasonably free from stone and shale" occurring in the third paragraph.

The Coal Company contended that the contract defined in definite and explicit terms the quality of coal it was required to deliver, and therefore nothing in the way of implication could be read into it. Cases were cited in support of the doctrine authoritatively established by the English courts, that when the parties to a contract have fixed and declared in express terms the matters and things to be performed, then it is not proper to go outside the ordinary grammatical sense of the words used.

Hence they said that the contract under consideration in Clause 3 explicitly defined the class of coal which they were required to furnish, namely, "freshly-mined, run-of-mine coal, reasonably "free from stone and shale, and from such seams as may be de- "signated by the Steel Company." As the seam so designated by the Steel Company was the Phelan Seam, the Coal Company literally and exactly complied with the conditions between November 1st and 9th, by supplying freshly-mined, run-of-mine coal from the Phelan Seam, reasonably free from stone and shale.

They argued that the price under the contract was low, and it could not be inferred that the Coal Company was to assume the risk of suitability. Put concisely, the Coal Company contended that provided they had complied with the literal terms of Clause 3 of the contract, they were not concerned whether the coal delivered was fit for metallurgical purposes or not.

The learned Judge found these contentions untenable. He said:—

"Apart from the fact that I have not been able to find the "coal delivered between November 1st and 9th, and rejected by "the Steel Company, was reasonably free from stone and shale, "I cannot accept as a sound legal proposition the contention of "the Coal Company that the bald words of the contract govern. "As I read the English decisions on contracts, I think a broader "view has been adopted in interpretation. In giving effect to a "contract, written or oral, the Court looks at the situation of the "contracting parties, in order to give a rational interpretation "of the real object aimed at. In the words of Bowen, L.J., "The Moorcock, 1889, 14 P.D., 68, 'The object of the Courts is "'to give efficacy to the transaction and to prevent such a fail- "'ure of consideration as cannot have been in the contemplation "'of the parties.'

"Here we have a Steel Company, operating a large plant, "entering into a contract with an adjacent Coal Company, not "for mere purchase of coal as coal, but for the purchase of coal "for operating an iron and steel making plant. The first clause "in the contract:—'The said Coal Company from its mines in "'Cape Breton County other than those lying north and west "'of Sydney Harbour, will supply..... all the coal that the "'Steel Company may require for use in its works as hereinafter "'described, namely, the blast furnaces, the coking ovens, the

" ' steel furnaces, the rolling mills, incidentally gas producers,
" ' kilns, ovens, foundries, etc.; mines and quarries, steam ves-
" ' sels of Steel Company operated for its own requirements.....
" ' switching engines at its mines and quarries, etc.'

" This I regard as the basis of the contract, namely, the
" purchase of coal to operate a steel plant and its accessories.

" The second clause, which provides for delivery, has per-
" haps, no very great bearing on the issue, except that in pro-
" viding for delivery it declares that the coal intended ' for use
" ' in the works of the Steel Company shall be delivered in cars
" ' on sidings where required by Steel Company, connected with
" ' the main line of the railway of the Coal Company;' and it
" provides likewise that ' bunker coal and coal for mines and
" ' quarries elsewhere than Sydney shall be delivered to the Steel
" ' Company at any shipping pier, etc.' It seems to me a rea-
" sonable inference that the parties understood that a part of
" the coal, and the largest part, was intended for use in the
" works of the Steel Company.

" The third clause defines the kind of coal to be furnished,
" a sort of specification which must always be read, it seems to
" me, in connection with the object of the contract as defined in
" Clause 1. It also seems to me, to come exactly in the rule laid
" down by Ld. Ch. J. in Ogden vs. Nelson, 1903, 2 K.B., 297,
" ' Where parties have a contract which contains a variety of
" ' stipulations and is silent as to others, no stipulation or agree-
" ' ment which is not expressed ought to be implied, unless it is
" ' necessary to give the transaction the effect or efficacy which
" ' both parties must have intended.'

" In this case, it is clear to me that the exact and only thing
" the parties intended was that coal should be furnished to oper-
" ate an iron and steel plant. I think also the express pro-
" visions of Clause 3 come strictly and easily within the doctrine
" laid down by Lord Herschel in Drummond vs. Van Ingen, 12
" A.C. 284. He adopts the language of Willes, J., in a former
" case: ' The doctrine that an express provision excludes im-
" ' plication, does not affect cases in which the express provision
" ' appears on the true construction of the contract to have been
" ' superadded for the benefit of the buyer.'

" It appears to me clear that the heart of the contract, or,
" to use the words of an eminent English judge, ' the spirit that

"'breathes through the contract' is for iron and steel making. "The specification in Clause 3 seems to have been added for the "benefit of the buyer and it seems to me to read in effect as fol- "lows: 'You are to furnish me with coal to make iron and steel "'and run my plant. The supreme factor of this is the absence "'of sulphur and ash, and therefore to guarantee me against "'inferior deliveries for this purpose, you must give me freshly- "'mined coal, not banked coal; run-of-mine coal, not slack coal, "'reasonably free from stone and shale, and from such seams "'as I may think are best adapted for such iron making.'

"The fourth clause provides that so long as the Coal Com- "pany should be willing and ready to supply coal for the Steel "Company, all coal required by the latter should be purchased "from the Coal Company to the amounts agreed to be supplied. "This plainly means that the Steel Company is to purchase "exclusively from the Coal Company so long as the latter is "ready to supply it.

"Clause 9 provides that the Steel Company shall not sell "or transfer to any person or corporation any of the coal de- "livered to it under this agreement, except with the consent in "writing of the Coal Company, unless the Coal Company re- "fuses to repurchase coal at the price of $1.00 per ton on said "sidings. I interpret this to mean that unless with the consent "of the Coal Company the Steel Company cannot sell a ton of "coal purchased from the Coal Company.

"Here we find a company manufacturing iron and steel "on a large scale, seeking coal to operate their plant. We find "a Coal Company, knowing this object, which appears plainly "on every page of the contract, undertaking to furnish them "with coal. Can it be possibly held that this contract, in any "aspect, is fulfilled by furnishing coal wholly unfit for making "iron or steel? Under the terms of the contract, the Steel Com- "pany is not permitted to purchase coal from any other com- "pany, and is not permitted to sell a pound of coal so obtained "to any person, except to the Coal Company at $1.00 per ton. "Can a court say that this contract means that the Coal Com- "pany can deliver to the Steel Company from No. 6 mine to "the full extent of the demands of the contract from which they "could not smelt a pound of iron or make a pound of steel, "could not sell a ton of coal, nor purchase from another Com-

" pany a ton of coal at a higher rate? Would such an inter-
" pretation ' give efficacy to the transaction ' or would it ' result
" ' in such a failure of consideration as cannot have been in the
" ' contemplation of the parties? '

" The contract itself contains many provisions which seem
" to me to conclusively negative any such literal interpretation
" as would nullify its obvious intention. Provision is made in
" the contract that after four years the Coal Company should be
" at liberty to furnish slack coal instead of run-of-mine coal, but
" this is accompanied with a proviso that it should be ' suitable '
" for steel making and to make the matter absolutely clear
" ' suitable ' is defined in the following terms: ' The slack coal
" ' so supplied, when properly washed by the Steel Company,
" ' shall not contain a percentum of impurities, to wit: ash and
" ' sulphur, appreciably greater than the percentum of impuri-
" ' ties in the same coal of run-of-mine grade, when crushed and
" ' washed in the same manner.'

" What meaning must I give to the requirement that this
" slack shall not contain a percentage of ash and sulphur ap-
" preciably greater than in the same coal of run-of-mine grade,
" when crushed and washed in the same manner, *for use in steel*
" *and coke making and for blast furnace coke?* Do not these
" words underscored, plainly intimate that ' making steel and
" ' coke for blast furnaces ' was the primary and supreme object
" of the contract? Can it be rationally held that while the Coal
" Company, if they furnish slack, must have it so free from ash
" and sulphur that it can be used for iron and steel making, and
" equal in this regard to run-of-mine coal, but that run-of-mine
" coal, to which it must be equal, need not be fit for metallur-
" gical purposes?

" Again, under the terms of the contract, the Steel Com-
" pany is to erect and operate a coal-washing plant, the object
" being to eliminate a portion of the impurities in the coal as it
" comes from the mine. Can I reasonably hold that the Steel
" Company is called to bear the expense of washing coal, which
" no washing plant would be effective to remove the impurities,
" and make it coal fit for metallurgical purposes?

" If the mere furnishing of run-of-mine coal from the
" Phelan Seam, which has passed the picking belt, is a fulfil-

"ment of the contract, then all the coal can be furnished from "No. 6, and no operation of the works is possible.

"The parties made their bargain. The Coal Company "agreed to furnish coal up to the requirements of the blast fur- "naces, suitable, as I conceive, for the requirements of iron and "steel making. They had the coal available for this purpose. "They refused to furnish it, and delivered instead coal abso- "lutely unsuitable for iron and steel making. Am I to say it is "an answer to this breach that they could make more money by "selling to some other persons?

"I think, as a matter of law, that the contract of October "20th, on its face, is a contract to supply coal to the Steel Com- "pany for the purpose of operating an iron and steel plant. I "do not have to read into it any implications, I have only to "make the necessary and inevitable deduction that coal to oper- "ate an iron and steel plant, must be coal with which such a "plant can be operated, for the object and purpose of the coal "contracted for is expressly stated in the contract. Between "November 1st and 9th, the Coal Company furnished in large "quantities coal not reasonably free from stone and shale, and "incapable of operating an iron and steel plant, and while they "were mining plenty of coal fit for such purpose, they failed to "furnish sufficient quantity of such coal to meet the require- "ments of the contract. The Coal Company thereby committed "a breach of the contract, and are responsible to the Steel Com- "pany for all the loss and damage which results from this "breach. I think the Steel Company was justified in refusing "to take in large quantities the unsuitable coal furnished by the "Coal Company between November 1st and November 9th, and "that such refusal did not constitute a breach of the contract, "and I think the contract is in full force."

The Judge accordingly held that the Steel Company had maintained its case, rendered judgment in its favour declaring the contract of October 20th, 1903, was still in operation, and ordering specific performance thereof, and further ordering a reference to establish the damages sustained by the Steel Company, the costs of the action, trial and reference being reserved until the report of the special referee. The Judge outlined the manner in which the damages were to be ascertained by the referee as follows:—

"1. As to the failure to supply sufficient coal during August, September and October, I think a referee should be appointed who should ascertain how much coal it was necessary for the Steel Company to purchase in those three months to operate their works, and the cost of such coal delivered at their works, and the difference between such cost and the contract price, $1.24, should be paid by the Coal Company to the Steel Company.

"The referee should also enquire into the question of any damages which the Steel Company sustained by reason of non-delivery of sufficient coal in August, September and October, apart from the additional cost of coal.

"2. The referee should also enquire into the cost of coal obtained by the Steel Company, since 1st November, over and above the contract price, $1.24, and all sums so paid in excess of $1.24, should be repaid by the Coal Company to the Steel Company.

"3. In November, in consequence of the failure of the Coal Company to deliver to the Steel Company sufficient coal suitable for the operation of its works, the works were suspended. The referee should ascertain the actual loss and damage which the Steel Company sustained by this temporary suspension of work."

This judgment was rendered on the 16th of September, 1907, and was immediately appealed from by the Coal Company.

The appeal was argued before the Supreme Court of Nova Scotia, *in banco,* consisting of Townshend, C.J., and Russell, Meagher and Lawrence J.J., and judgment was delivered on January 7th, 1908, unanimously affirming the judgment of the Superior Court. The Chief Justice in rendering judgment and after referring to the provisions of the contract discussed by Longley, J., said:—

"It seems to me sufficient to point out these provisions of the contract to show that in terms it provides for steel making coal to be supplied by the Coal Company, that is to say, coal which could be used for the various purposes specially enumerated in the agreement. If that were not the meaning and intention of the parties to a contract drawn with such care and circumspection, how can we account for the Coal Company requiring such particulars to be set out in the contract. Ac-

"cording to the defendant company's view it had nothing what-
"ever to do with blast furnaces or steel furnaces or coking ovens,
"all it had to do was to supply a certain quantity of coal as
"demanded without reference to its metallurgical qualities, and
"the Steel Company were bound to take it whether suitable for
"steel making or not, and this was to go on for 99 years. I can-
"not regard such a construction of the contract as a reasonable
"one, or in consonance with its express provisions.

"But it is claimed that the Coal Company guarded itself
"against any guarantee of its suitability for the purpose in
"clause 3 by the words 'all coal furnished shall be freshly mined
"and of the grade known as 'Run of Mine' reasonably free
"from stone and shale, and shall be supplied from such seams
"then being worked by the Coal Company as the Steel Company
"may designate.' True, the Coal Company did not guarantee
"its fitness for the Steel Company's works, but the specification
"just quoted in no way conflicts with the Steel Company's con-
"tention that if coal suitable was to be found in the seam de-
"signated that was the coal it was entitled to get. The Steel
"Company no doubt took the risk of suitable coal for its pur-
"pose being found in the seam designated, and required that
"such coal as it designated should be freshly mined, etc. It is
"evident that on this basis the parties were negotiating and clear
"that while the Steel Company assumed this risk, if any, the
"Coal Company refrained from, probably refused, to give any
"guarantee, limiting its responsibility to the words already
"quoted, and requirements as to washing.

"That part of clause 3 which provides for 'slack coal'
"after four years, in my opinion strongly supports the view I
"have adopted.

"1. It has to be of the same specification as to quality as
"run-of-mine.

"2. It is to be taken if suitable for use in steel making and
"for blast furnaces.

"3. Suitable is defined to mean that the slack coal when
"properly washed by the Steel Company shall not contain a per
"centum of impurities, to wit, ash and sulphur, appreciably
"greater than the per centum of impurities in the same coal of
"run-of-mine grade when washed and crushed in the same
"manner. As the per centum of sulphur and ash in run-of-mine

"coal was made the standard of the per centum of impurities "in the slack, it would be a strange and illogical conclusion that "the coal which was to be the standard was not itself to be "sufficiently free from these impurities to enable it to be used "when washed for steel making purposes.

"When we find in express terms in the contract that the "'slack' was to be as suitable for *steel making* and *blast furnace* "*coke* as the run-of-mine, surely that necessarily means that "the run-of-mine was to be coal suitable for the same purpose "and was so understood by both parties to the contract. It cer- "tainly does indicate that when the Coal Company got the right "to supply coal, an inferior grade, and greatly to its advantage, "the Steel Company required in return for such a concession "that it should be as suitable as the run-of-mine.

"These provisions, I think, must be taken strongly to con- "firm the views already expressed, that while both parties knew "from experience that there was coal in the mines sufficiently "low in sulphur and ash for steel making, the Coal Company, "while giving no guarantee to that effect, agreed to supply for "the various uses of the Steel Works, coal of that description "when it could be found in the seams designated, but when "coal of a lower grade was to be taken the Steel Company for "its protection stipulated that it should not be less suitable than "the coal on which the risk was taken. If not, why take the "impurities in run-of-mine to be the standard by which the "slack was to be judged? The more closely the contract is "examined the more clearly does it show that what was intended "and agreed to was coal which could be used to operate all the "Steel Company's works.

"It must be borne in mind always that it is an established "fact that on the designated Phelan seam as worked by the Coal "Company there was at the time of the alleged breach of con- "tract, and for years before, coal suitable for steel making which "the Coal Company neglected or refused to deliver.

"In view of the opinion I have already expressed as to the "meaning of the contract it is only necessary to say that the "Coal Company did not perform the obligations undertaken by "it, and in refusing or neglecting to further supply coal from "those mines in the Phelan seam which were suitable for the "steel plant, and in not furnishing such coal in sufficient quan-

" tities, were guilty of a breach of contract for which the Steel " Company is entitled to recover damages.

" It is equally clear that the Steel Company had no inten- " tion of repudiating or rescinding the contract with the Coal " Company and that nothing in its action in rejecting unsuit- " able coal justified the Coal Company in declaring the contract " was at an end, and thereupon refusing to furnish any more " coal under it.

" I have not so far made any reference to the vast array of " authorities cited to us at the argument, and in the factums. " I have not thought it necessary to do so because of the view I " have adopted that the contract in term expressly calls for coal " suitable for steel making, and if so it is not necessary to hold " that such a term is implied, and most of the cases to which " our attention was directed were decided on that ground.

" The point was made by the learned Counsel for the De- " fendant Company that there was a misjoinder of parties " Plaintiff in this action, that both could not succeed and there- " fore one or the other must be struck from the record. The " mortgage by the Steel Company to the National Trust Com- " pany contains an assignment of the contract to the Trust Com- " pany for the security of the bondholders, and it is contended " that the Trust Company is the absolute holder of the rights " and interest under the contract and so far as that Company " is concerned there is no breach, as under one clause in it the " Trust Company could only hold it 'for the operation thereof " 'by the trustee or a purchaser thereof.' That that position " has not been assumed by the Trust Company, and therefore it " has no right of action.

" It is, however, to be noted that the Steel Company is not " in default and has been and still is operating its works, and " nothing has occurred which would justify the Trust Company " in entering and taking charge of its works, and rights under " the contract. As found by the trial Judge and now sustained " by this Court there has been a breach by the Coal Company " for which the Steel Company is entitled to recover damages " and other relief. But this in no way disentitled the Trust " Company to join in this action to have a declaration of its " rights under the contract, and what those rights are has been " a material, indeed the most material question in controversy.

"I can see no objection to the joinder in this action where the "rights of the two plaintiffs arise under the same contract and "where the result would affect each in the same manner."

From this judgment the Coal Company appealed to the Judicial Committee of the Privy Council, and the case was argued early in the month of December, 1908. There were present at the hearing Lord Robertson, Lord Atkinson, Lord Collins and Sir Arthur Wilson.

The Coal Company was represented by W. C. Danckwerts, K.C., (of the English Bar), E Lafleur, K.C., C. S. Campbell, K.C., and H. A. Lovett, K.C. (of the Canadian Bar), and the Steel Company by Sir R. B. Finley, K. C. (of the English Bar), Wallace Nesbit, K.C., H. C. McInnes, K.C. (of the Canadian Bar), Geoffrey Lawrence (of the English Bar), and A M. Stewart (of the Canadian Bar).

The Coal case was presented by Mr. Danckwerts in a most elaborate argument, occupying the best part of two days. His address was a very able one; every possible point was fully discussed by him, and the judgments of the Nova Scotia Courts were analysed in a most critical manner.

Mr. Lafleur followed with a short and concise argument on some of the principal legal points involved, but there was really very little left for him to say after Mr. Danckwerts' exhaustive argument.

Sir Robert Finley opened on the Steel side, and, in a clear and convincing argument, absolutely demolished the contentions and arguments of the Coal Company. He was followed by Mr. Nesbitt, who in a clear and forceful address, presented his views as to the construction to be placed upon the contract.

During the course of Sir Robert Finley's argument, their Lordships held that the evidence which was submitted by the Coal Company of the negotiations between the parties prior to the execution of the contract of October 20th, 1903, and the draft contracts, had been properly excluded by the Trial Judge. At the conclusion of the argument, their Lordships took the case under deliberation.

Unfortunately, Lord Robertson died early in January, but his death did not necessitate a rehearing.

Judgment was rendered on the 11th of February, 1909,

affirming the judgment of the Supreme Court of Nova Scotia, but ordering damages for the repudiation of the contract by the Coal Company instead of specific performance.

The judgment was delivered by Lord Atkinson.

After reciting the principal provisions of the contract and commenting upon the evidence, his Lordship said:—

"It is not, in their Lordships' view, a case in which it is "necessary to import by implication words into a contract in "order to effectuate the common intention of the parties to it. "What is necessary is to determine what they meant by the "language they employed. The numerous authorities cited in "argument dealing with the principles upon which terms are to "be so introduced into a contract need not, therefore, be dis-"cussed.

"It was strenuously contended on behalf of the Coal Com-"pany, both before their Lordships and in the Colonial Courts, "that in the coal trade the phrase 'reasonably free from stone "'and shale' has a trade meaning, that is, in effect, implies that "the coal is to be as free from stone and shale as it can be made "by reasonable and proper picking, and nothing more; and that "no matter how overcharged with stone or shale the coal may be, "if these impurities happen to be carried in laminæ, permeating "the lumps of coal so that they cannot be removed by picking, "the coal must be reasonably free from stone and shale within "the meaning of the words. In the opinion of their Lordships "this contention cannot be sustained. The words of the con-"tract, they think, mean that the coal must, in fact, be 'reason-"ably free from stone and shale' irrespective of the method by "which that fact may be ascertained.

"The proper meaning to be given to the words contained in "paragraph No. 1 is a matter much more difficult to determine.

"It is clear upon the evidence that coal may satisfy all the "requirements of paragraph three, and yet be so overcharged "with sulphur as to be quite unfit to be used for metallurgical "purposes. And the contention of the Coal Company is that, "though over ninety per cent. of the coal supplied to the Steel "Company was, as they well knew, required for those purposes, "yet they are under no obligation to deliver coal reasonably "suitable for them, provided only it satisfies the requirements "of paragraph 3. Both parties, the Coal Company alleges, knew

"the nature of the coal taken from the seam. Up to the date "of the agreement it was, with the exception of what came from "the east side of pit No. 4, all suitable for the smelting opera- "tions carried on by the Steel Company. Guided by this know- "ledge, the Steel Company (they urge) concluded that the pro- "visions of paragraph 3 afforded them adequate protection, and "that they were, therefore, willing to take their chance as to "the purity and fitness of the coal to be won from the seam or "seams they might designate. The function of paragraph 1, "the Coal Company allege, was merely to furnish a measure of "supply.

"No doubt there is much to be urged in favor of this view; "but, on closer examination of the several provisions of the con- "tract, it appears to their Lordships not to be the true view of "the mutual rights and obligations of the parties.

"In the first place, the detailed enumeration and descrip- "tion of the Steel Company's works contained in paragraph 1 "cannot have been introduced as a measure of quantity. This "is clear from the proviso at the end of the paragraph which "itself sets up a definite measure of quantity of a different "character, namely, 'the quantity required to furnish the coal "'or coke necessary to operate blast furnaces of a capacity not "'exceeding that of the Steel Company's present four blast "'furnaces, and to operate the steel furnaces and mills with "'incidental plant, as above described, engaged in manufactur- "'ing the product of such four blast furnaces or their equi- "'valent.' Evidence was given that the restriction of the amount "to the requirements of the four blast furnaces existing at the "date of the agreement, or of furnaces equivalent to them, was "one of the advantages the Coal Company gained by the new "arrangement, of which the agreement of the 20th October, "1903, was part.

"Again, in the enumeration in paragraph 1 there is no "limitation as to the number of blast furnaces, coking ovens, "steel furnaces, rolling mills, etc., which the Steel Company "might use or employ. In the absence of such a limitation the "enumeration could not afford any measure of quantity; yet it "must be taken to have been introduced for some purpose, and "the only purpose it can apparently subserve is to specify pre- "cisely and in detail the various uses to which the coal to be

"supplied was to be put. There would be no object, however, "in doing this if the Coal Company was not at all concerned "with the suitability of their coal for these uses.

"Again, only one of the requirements of paragraph 3 deals "with the chemical composition of the coal. It is to be 'rea- "'sonably free from stone and shale.' Nothing is mentioned "expressly in any other part of the contract as to the ash to be "left when it is burned or the amount of sulphur it may contain, "and there obviously cannot be any such thing as run of mine "slack. The slack to be supplied, however, must be 'suitable "'for use in steel making and for blast furnace coke'; that is, "it must not, when washed in the same manner as the run-of- "mine coal, contain appreciably more ash or sulphur than the "coal. The standard set up is, no doubt, a standard for slack, "but it is strange that the freedom of the slack from sulphur "should be measured by the purity in the same respect of the "coal, if the amount of sulphur, at least in an organic form, "contained in the coal was a matter with which the Coal Com- "pany had no concern. On the other hand, if the coal was to "be so free from ash and sulphur as to be 'suitable for use in "'steel making and for blast furnace coke,' it would be a most "natural thing to provide that the slack should be equally pure, "and, therefore, equally suitable in these respects. The pro- "vision at the end of paragraph 3 in reference to washing the "coal was apparently introduced to relieve the Coal Company "from an obligation which the other parts of the contract threw "upon them, or might throw upon them; but coal is washed to "make it suitable for use for metallurgical purposes, and there "is nothing in this contract to impose on the Coal Company a "duty to wash the coal, unless it be found in an obligation to "provide coal suitable for these purposes. And if that duty had "not been thus impliedly imposed upon them, it is difficult to "see why special clauses should have been introduced to relieve "them from it. The whole clause seems, therefore, to suggest "that the suitability of the run-of-mine coal for the uses indi- "cated was within the contemplation of the parties when they "entered into the contract.

"Paragraphs 4 and 9 of the contract are most important. "They impose on the Steel Company for the full period of 90 "years an obligation to purchase all the coal they may require

"from the Coal Company if the latter are ready to supply it, "and provide, further, that the Steel Company shall not sell any "of the coal supplied to them without the consent in writing of "the Coal Company unless the latter refuse to re-purchase it "at $1 per ton, i.e., 20 cents per ton less than the cost price. "These provisions would mean complete and speedy ruin to the "Steel Company if 90 per cent. of the coal supplied, or even a "much less proportion of it, were unsuitable for the operations "it was contemplated and intended they should carry on. And "it is quite inconceivable that any rational business man would "enter into an arrangement necessitating such results. These "provisions of the contract are only explicable on the assump- "tion that, of the coal to be supplied, 90 per cent. was to be "reasonably suitable for use in the operation it was known the "Steel Company intended to carry on in the works so fully "described. In their Lordships' opinion, the words 'all the "'coal that the Steel Company may require for use in its own "'works' must, therefore, be read and interpreted as if they "ran 'all the coal suitable in character that the company may "'require for use in its own works.' It by no means follows, "however, from this construction that the Coal Company war- "rant that all the coal to be supplied shall be of this character, "or that they are absolutely bound, during the long period of "90 years, to supply from the designated seams coal of this kind "to the amount required. Nor was either of these propositions "contended for. The obligation of the Coal Company is, in "their Lordships' opinion, much more limited. It is, as regards "this matter of quality, independent of the provisions of para- "graph 3 and of the obligations they specifically impose. They "are bound to supply from the designated seam or seams, coal "reasonably suitable in quality for the purposes of the Steel "Company indicated in the contract, to the extent that the same "can be obtained by the reasonable and proper working of the "mines opened or to be opened therein. The burden this places "on the Coal Company is easy to bear, and is fully compensated "for by the price to be paid for their coal, moderate though that "price be. They will, no doubt, be prevented from doing what "they have in effect done, and claimed the right to do, namely, "the right to discriminate against the Steel Company, to select "deliberately from their vast supplies of coal the particular

"description which they knew to be almost entirely unsuitable "for the uses for which it was required, and to dispose of what "was suitable for those uses to others; but beyond that it would "not hamper them in their business. According to this view, "the Coal Company were not justified in repudiating their con- "tract, but the Steel Company are not entitled at one and the "same time to specific performance of the contract and to dam- "ages for the loss of it. Inasmuch, however, as according to "their Lordships' view, this is not a contract of which, on the "authorities cited, specific performance would be decreed by a "Court of Equity, the Plaintiffs are entitled, owing to the "wrongful repudiation of the contract by the Defendants, to "treat the contract itself as at an end and to recover damages "for the loss of it in addition to the damages in respect to those "breaches of it which may have been committed before repudia- "tion, namely, up to the 9th November, 1906. The proper re- "ference should, their Lordships think, be directed to ascertain "these damages.

"Their Lordships will, therefore, humbly advise His "Majesty that the judgment of the Supreme Court should have "been affirmed, and that the case should be remitted to that "Court to have the damages under the two heads above men- "tioned assessed in the usual way.

"The Appellants must pay the costs of the Principal Ap- "peal. There will be no order as to the costs of the Cross- "Appeal."

V. E. MITCHELL.

A YEAR OF DEPOSIT GUARANTY.

IT was perhaps hardly to be expected that the people of the United States, by defeating Bryan and his policies at the election last November, had rid themselves definitely of the agitation for deposit guaranty. The effect of the vote was to take the issue out of federal politics for the ensuing four years; but it could have little influence in preventing the carrying out of local campaigns in states having a strong predilection for trying the scheme. It is extremely likely so long as the present system of isolated small banks endures in the big Republic, that the position of bank depositors in general will continue to be somewhat unsatisfactory. And that being so, a more or less continuous effort on the part of various state legislatures to safeguard and protect them is to be looked for.

Readers of the JOURNAL are well aware that Oklahoma was the first state, so far as the modern movement for deposit guaranty is concerned, to plunge into the untried waters. Almost immediately after the 1907 panic, in fact while the echoes of that catastrophe were still sounding, the governor and legislature hastily knocked together their scheme of guaranty, and pushed it into effect. After it was enacted they stopped at nothing to make it a success. Thus, within two months of the passage of the Act, a great advertisement was given to the closing up by the state examiners of a certain Bank of Colgate. It was everywhere announced that the new law was working grandly and that thanks to it the depositors in the closed bank would lose not a cent. The sequel to that performance came the other day when the state law courts recommended the removal of the bank examiner who had closed the Colgate bank on the ground that his action had been taken for political purposes rather than because of the condition of the bank itself. In other words, according to the finding of the courts, the state government wanted a bank failure in order to demonstrate the good points of its pet scheme. None being in sight just at the moment, the little Colgate concern was closed and the incident paraded as a wonderful success for deposit guaranty.

When the Oklahoma law went into force the bankers in the near-by States of Kansas and Nebraska were much perturbed about their deposits. The fearful ones amongst them reasoned after the following fashion: "If the banks in Oklahoma are able to advertise that all deposits held by them are guaranteed, and thus perfectly safe, they will be able to draw deposits from neighbouring states, perhaps to the extent of many millions." So the agitation began to spread. But it was not until the present year that the friends of the deposit-guaranty scheme outside Oklahoma were able to bring their campaign to a successful termination. At the time of writing it is said that in both Kansas and Nebraska, deposit guaranty will have been put in force in the course of a couple or three weeks.

Regarding these departures the opinion in the East is that it is a good thing to have dubious plans of this nature tried out in comparatively unimportant parts of the country. The Wall Street journal remarks editorially that perhaps no better place than Oklahoma for trying the venture could be found. Suppose the very worst results follow, the commercial and financial interests of the United States as a whole will not be noticeably affected as the experiment applies only to a small and unimportant state.

It should be said that the legislation which is expected to pass in Nebraska and Kansas is not so radical or sweeping as the Oklahoma measure. It is provided in the Nebraska law that no bank with less than $10,000 capital may be chartered; and the capital requirement is proportioned to population. Banks coming under the terms of the guaranty are forbidden to advertise the guaranty feature except on their stationery and on placards placed in the windows. They may not pay a higher rate of interest than four per cent. per annum. In sixty days after the bill becomes law an assessment or tax of one-half of one per cent. on the average deposits for the preceding six months is to be levied; and in January and July, 1910, two other assessments of one-quarter of one per cent. will be laid on the banks. That will give a fund approximately equal to one per cent. on the total deposits of the contributory banks. Out of this fund depositors of failed banks are to be paid. On proof of claim they are to get their money not later than sixty days from the date of sus-

pension. When the fund falls below one-half of one per cent. of total deposits, further semi-annual assessments of one-twentieth of one per cent. will be levied.

It will be interesting to study the effect of the Oklahoma law. Of course, banking readers will easily understand that a single year is rather too short a time for the vicious tendencies engendered by the law to produce their natural consequences. Possibly a period of three years or more will be required for them to wreak their full force of evil on the institutions entering into the contract of guarantee. The evil influences have, however, promptly made their appearance, as was freely predicted, and if the legislators of the nearby states were not blind to all but one thing in connection with the scheme, they would already have seen enough to cause them to set their faces firmly in a direction opposite to that in which Oklahoma travelled.

The 1908 report of the Comptroller of the Currency gives the following particulars about Oklahoma's measure.

"The banking law of the State of Oklahoma, which includes the 'deposit-guaranty' feature, was approved by the Governor on December 17, 1907, and became operative February 17, 1908. The law provides that in sixty days after its passage and approval, the state banking board shall levy against the capital stock an assessment of one per cent. of the bank's daily average deposits, exclusive of the deposit of State and United States funds properly secured. Provision is also made for additional assessments if the guaranty fund is depleted in order to keep the fund equal to one per cent. of the deposits as provided by the act. Section 4 permits national banks in the State to voluntarily avail their depositors of the guaranty feature."

The first assessment on the banks produced $150,000. As soon as the money was in hand, the sum of $111,000 was invested in state warrants. In other words, the state borrowed that much of it. The rest was immediately put back in the banks operating under the guarantee under the same regulations which govern the state treasurer in depositing state funds. It appears that when the act went into force there were about 800 banks in business in the State of Oklahoma. Of these 312 were national banks subject to the control of the federal government at Washington. Some 57 of these national banks at once availed them-

selves of the guaranty feature and submitted to the assessment of one per cent. of their deposits. Then the comptroller at Washington took a hand in the business, and acting on the advice of the Attorney-General of the United States, informed the 57 national banks that their entering into the guaranty contract was *ultra vires*. He furthermore let it be known that national banks in Oklahoma that persisted in making themselves liable for the deposits of other banks in the manner prescribed, would forfeit their charters as national banks.

On this development most of the 57 national banks withdrew from the guaranty. Some 22 banks, with aggregate capital of $850,000, were placed in voluntary liquidation. Seventeen of them having aggregate capital of $650,000, were succeeded by, or reorganized as state banks; and five, with aggregate capital of $200,000, were consolidated with other national banks.

This description, taken from the Comptroller's report, is the official federal account of the results up to 31st October, 1908.

From time to time in the public press interesting items as to the working of the law have appeared. Before dealing with them it will be well to notice the claims put forward by the Oklahoma state officials as to the great benefits conferred on the people. At the close of the first year the secretary of the state banking board issued a statement in which it was said that the total deposits of national banks in Oklahoma in December, 1907, was $38,318,729, and in December, 1908, the total was $36,280,346, or a decrease during the year of a little over $2,000,000. For the corresponding period, the total deposits of the state banks were $17,215,535 in December, 1907, and $29,448,970 in December, 1908, or an increase of over $12,000,000.

In pondering these figures it is to be remembered that the whole deposits of those national banks which changed from national to state control would be transferred bodily to the state bank column. Their deposits would probably account for about half the whole increase; they might account for more than half. This phase of the story relating to the conversion of a section of the national banks appears to have been a manifestation of panic. About one-sixth of the national banks in the state were seized with the violent fear that unless they went in for the guaranty they would lose a great part of their deposits, and thus be

crippled in their earning power. So what they did was to make their stockholders liable for the losses resulting from the bad and dishonest banking practiced by the unscrupulous and inexperienced ones amongst the bankers covered by the guaranty. There is every reason to believe that the excesses of some of the guaranteed banks and the results to be expected during the present year will make even the depositors shy of trusting their money to the guaranteed banks.

As prophesied by Eastern critics, one of the first effects of the measure was to call into being dozens of small banking institutions organized by irresponsible parties often with questionable reputations. As soon as these so-called banks got their charter from the state board and permission to begin business they at once paid a few dollars into the guaranty fund and advertised far and wide that "this bank's deposits are guaranteed by the State of Oklahoma. Give us your deposits. You cannot lose. We pay 6 per cent. interest." It is said that in a few cases as much as 7 and 8 per cent. interest has been allowed on deposit by guaranteed banks. How any banker in his senses can fail to see that such ridiculous rates and such free-handed dealing in banking charters must have disastrous results, passes comprehension. The fact that deposits increased rapidly under the guaranty, by itself, is no justification for the policy. Quite frequently a very rapid growth of deposits and discounts signifies in the banking business that the elements of future disaster are being accumulated. Everybody in Canada remembers the phenomenal progress of the Sovereign Bank under its first management, and what it culminated in. Yet the Sovereign Bank methods would be counted slow and conservative when compared with the style of banking practiced in Oklahoma under the guaranty.

The increase in deposits about which so much boasting is heard, is only one feature of the plan's workings; it is not the vital feature. " How are those deposits invested," is the essential question. Almost any one with the smallest real knowledge of banking can imagine fairly well how the new deposit fund is being employed. It is only necessary to remember that, by the operation of the guaranty, a great deal of deposit money has been transferred from the keeping of honourable bankers who had

administered it well and safely, and given into the care of irresponsible novices, perhaps in some cases handed over to scoundrels and reprobates.

At the present moment high carnival reigns. To-morrow will be the reckoning. It is not at all difficult to see in what manner payment will fail to be made. Just as soon as the crop of losses from bad investments and bad banking begins to get heavy, the so-called guaranty fund will most likely be subjected to extraordinary demands in order to pay the depositors of failed institutions. Either the managers of the fund will make an honest effort to protect those depositors according to the terms of their act, or they will not. If they do try to carry out their promises it means heavy assessments on the banks which made themselves liable under the guaranty. As for these banks and their managements it is likely that the losses which they thus incur will bring them little or no sympathy from the rest of their country or the rest of the world. Instead of getting sympathy they will be held up to general ridicule.

It may be, once it becomes clear that the losses will be large, that no real earnest attempt will be made to enforce collection of the indemnity for depositors. If that happens the contributory banks may escape some part of the evil consequences of their foolish action; but on the other hand the whole scheme will be proved to be a gross fraud.

Regarding the probable outcome the *Wall Street Journal* of 24th February, 1909, says: "The crisis has not come yet in Oklahoma, but that it cannot be far away is shown by the urgent efforts to amend the law providing for the guarantee of bank deposits.

"That the party now in power in Oklahoma is committed to the guarantee plan is obvious, and moreover, it is prepared to go any length to vindicate its policy. Its last and most reckless proceeding is the introduction of a bill to allow public funds to be deposited in the guaranteed banks without security to the State. It is an ingenious idea, and ensures that when the inevitable smash comes the State will be involved as well as every guaranteed bank."

H. M. P. ECKARDT.

NEGOTIABILITY OF DEPOSIT RECEIPTS.

By John D. Falconbridge, M.A., LL.B.

I HAVE read with interest the article on this subject published in the Journal for October, 1908 (*supra*, p. 6). By way of preface to what is to follow, it may be suggested that Mr. Chipman states in too general a way that the question whether deposit receipts are negotiable is answered in the negative in Canadian Banking Practice. The answer to question 250 in Mr. Knight's compilation is the one quoted from. It refers to a deposit receipt in the form submitted, namely:

"Received from J. Smith on deposit, for a period of not less than three months from this date, and subject thereafter to ten days' notice of requirement or withdrawal, the sum of one hundred dollars, to be accounted for upon surrender of this certificate to J. Smith with interest (until date of notice only) at the rate of three per cent."

The reason given is that the promise to "account for" the amount cannot be held to be an unconditional promise to pay to the holder of the receipt and therefore the document is not transferable by endorsement within the Bills of Exchange Act.

It appears of course on the face of it that the answer to question 250 depends upon the form of the receipt, but Mr. Chipman proceeds to state that some examination of the law on the subject may be profitable in view of the fact that two commentators on the Bank Act "both lean to the contrary opinion, that such instruments are negotiable unless expressly made otherwise." The fact that I am mentioned by name by the writer of the article is my excuse for pointing out that, if he means by "such instruments" deposit receipts in the form above set out, there is nothing in my book[1] to indicate an opinion that such documents are negotiable. If the writer by "such instruments" means deposit receipts in general, then the answer quoted from

Canadian Banking Practice is irrelevant, as that answer refers solely to a deposit receipt which in form is not a promise to pay, and there is no foundation laid for the antithesis between my conclusions and those of the writers in Canadian Banking Practice. The writers of the answer to question 251 in the same compilation suggest the possibility that a deposit receipt may be so worded that it is in effect a promissory note and therefore negotiable in the sense that the bank may be liable to any holder of the receipt to whom it may be negotiated and may lose some advantages, as for instance the right to hold the funds against a debt of the depositor. The answer to question 251 states that a deposit receipt in the ordinary form is not negotiable and is a mere evidence of indebtedness by the bank to the depositor. Presumably the words "in the ordinary form" are to be interpreted by reference to the previous answer, already referred to, where it is stated that a deposit receipt *as ordinarily worded, i.e.*, in which the bank indicates that the money "will be accounted for," is not transferable in the sense in which promissory notes are transferable, and that the addition of the words "not transferable" does not alter the effect of the form, but merely calls attention to its nature. I have quoted from all the answers on the subject so as to make it clear that Mr. Chipman's general proposition referred to at the beginning of this paper, and which forms one of the main conclusions of his article, does not receive the support from the writers in Canadian Banking Practice which the reading of the article would lead one to believe.

The article, however, raises some general questions of greater interest than matters merely of personal criticism. As the writer states (*supra*, p. 14), there are three points involved in the discussion: (a) the form, (b) the intention, and (c) the legality, of the negotiability of deposit receipts.

I have elsewhere submitted that the effect of the endorsement of a deposit receipt depends largely on the wording of the receipt [2]. It is, I submit, stating the matter too broadly to say that "in England it is settled that the receipt is not negotiable." The case of *In re* Dillon, Duffin v. Duffin [3], cited *supra*, p. 7, is not an authority for the general proposition. It is true that the judgment of one member of the court [4] contains the dictum that the receipt is not a negotiable instrument. The

decision of the court was however merely that a deposit receipt is a good subject of a *donatio mortis causa* and that the gift was not defeated by the fact that the holder completed on the back of the receipt a form of cheque. The receipt also bore upon it the words "This deposit receipt is not transferable." With these words *cadit quaestio;* even if in other respects the receipt is a promissory note, it is incapable of negotiation [5]. The claim to the fund may, however, be assigned, as is pointed out in *re* Commercial Bank of Manitoba, Barkwell's Claim, 1897, 11 Man. R., 494 [6].

Hart [7] lays down the general proposition that a deposit receipt is not a negotiable instrument, but the cases which he cites in this connection are distinguishable. In Pearce v. Creswick, 1848, 2 Hare, 286, the receipt contains the words "to be accounted for," and the case is therefore irrelevant to the general proposition [8]. The form of receipt in Moore v. Ulster Bank, 1877, 11 Ir., R. C. L., 512, is not set out in the report. There is nothing to show that the receipt contained any promise to pay. On the contrary it would seem likely that in form it was merely an acknowledgment of the bank that it held a certain sum to the use of the depositor [9].

It seems to me that the article under review leads to a false conclusion because the author fails to recognize that there are deposit receipts and deposit receipts. He adopts indiscriminately the dicta of English text-writers and judges who have in their minds only certain non-negotiable forms of deposit receipts [10]. These dicta may be quite inapplicable to other forms of receipt.

The leading case in Ontario is *re* Central Bank, Morton & Block's Claims, 1889, 17 O. R., 574. The body of the receipt in question there reads as follows: "Received from Messrs. Cox & Co. the sum of six thousand dollars, which this bank will repay to the said Cox & Co. or order with interest at four per cent. per annum on receiving fifteen days' notice. No interest will be allowed unless the money remains with this bank six months. This receipt to be given up to the bank when payment of either principal or interest is required."

It will be seen at once that this receipt differs from the one quoted at the beginning of this paper in two essential particulars, namely, because (a) it contains a promise to pay and (b) it is payable to the depositor *or order.*

A promise to pay is essential to a promissory note. If there is no promise to pay there can be no question of negotiability in the sense of the law merchant. If a deposit receipt contains a promise to pay and the question is whether it is negotiable or not, it is irrelevant to cite cases in which the subject matter is, for instance, a receipt in which the bank undertakes to "account for" the deposit. But as Boyd, C. points out [11] it is of elementary knowledge that if the writing contains the essential requisites, no mere form of words is needed to constitute a promissory note. The paper is called a "deposit receipt," but it may nevertheless be a promissory note. If you find an unconditional promise to pay a certain sum in money to a person, or his order, at a time which is sure to happen, then to such a document the law will attribute the property of negotiability as a promissory note. Mr. Chipman says, however, that it is essential to add that this negotiable form must contain an intention of negotiability, of which the form is simply the evidence (*supra,* p. 11). I will return to this question of intention later.

The other distinctive feature of the receipt in *re* Central Bank, *supra,* namely, that it is payable to the depositor or order, is of less importance than it was formerly, because a note payable to a named person is under the Bills of Exchange Act, sec. 22, in effect payable to such person or order. Prior to 1890 and when *re* Central Bank was decided, however, the effect of the omission of words indicating that an instrument was to be payable to a person's order was to negative negotiability. The learned Chancellor was therefore able to dismiss the earlier cases of Mander v. Royal Canadian Bank [12], Lee v. Bank of B. N. A.[13], Bank of Montreal v. Little [14] and Saderquist v. Ontario Bank [15] as irrelevant to the question before him. Yet we find the first three cases cited as authority for the proposition that our own courts, in the earlier cases, universally took the English view that "deposit receipts" are not negotiable [16], as if there were but one form of deposit receipt, whereas in each of the three cases negotiability was negatived by the form of the receipt.

Mr. Chipman regards the use of the words "order" or "bearer" in a document as still being of some consequence in determining its negotiability in that it shows the intention of the parties. In this way he once more brings us back to the

principle for which he contends, namely, that it is the intention of the parties that alone can determine the character of the instrument [17].

The receipt in question in Richer v. Voyer [18] is in all essential particulars similar to that in question in *re* Central Bank, set out above. Monk, J. held that the document was a negotiable instrument. His judgment was reversed by the Court of Review, but mainly on other grounds. A further appeal to the Court of Queen's Bench was dismissed, but it was pointed out in that court that the negotiability of the receipt was not in question. In the Privy Council also, the members of the Judicial Committee took the view that it was not necessary to decide the "vexed question" of the nature of the receipt, and contented themselves with saying of "a document not in use in England, and which has been the subject of conflicting decisions in America" that there is high authority in favour of construing it as a negotiable instrument.

Mr. Chipman maintains that the determining factor in the Central Bank case was that the document "was intended to be of transmissible character, and was issued avowedly for the purpose of raising money upon it by means of negotiation on the part of the apparent depositor" [19]. It is sufficient to point out that the judgment does not proceed upon this ground. In view of the judgment in this case and the dictum in Richer v. Voyer, and the decisions in the American cases referred to in Morse [20] and other standard works [21] in which documents of a similar nature have been held on account of their form to be negotiable, the onus is cast upon anyone who asserts that the form is not the determining factor. How does the writer of the article now under review seek to discharge this onus? He cites the dictum of Pollock, C. B. in Sibree v. Tripp, 1846, 15 M. & W., at p. 28, and the case of Overton v. Tyler, 1846, 3 Pa. St. (Barr), 346. The document in question in Sibree v. Tripp was in the following form:—"Memorandum—Mr. Sibree has this day deposited with me £500, on the sale of £10,300 3l. per cent. Spanish, to be returned on demand." Parke, B. (at p. 35), states that the document is not a contract to pay money, but a *deposit* of money, and that the identical money is to be returned. Alderson, B. (p. 37), agrees with Parke, B.'s construction of the document. Platt, B. (p. 38), thinks it is quite clear on the face of the in-

strument itself that it is an agreement to return a deposit of money in a particular event and therefore not a promissory note. Such a document has little in common with the deposit receipt which we are discussing. There is left the isolated dictum of Pollock, C. B. (p. 28), that a promissory note means something which the parties intend to be a promissory note. We are hardly justified in founding upon this remark, made in reference to a document which was held not to be a contract to pay at all but an agreement to return a specific deposit, a general proposition that the intention of the parties rather than the language used by them governs the negotiability of the document. Nor does Overton v. Tyler afford a much firmer foundation for such a proposition. The document there in question was in the ordinary form of a promissory note payable to bearer, but with the addition of a number of special clauses, including a warrant to confess judgment, a release of errors, a waiver of stay of execution and of right of inquisition on real estate. It was held that a document in this form was not a promissory note. It is said in the judgment [22] that if the parties "meant to make not a promissory note within the Statute of Anne, but a special agreement with power to enter up judgment on it they are bound by the result as they themselves viewed it." The language quoted does not seem to give any unambiguous support to Mr. Chipman's proposition; in any case it is stated by the court merely to express one of the principles of Patterson v. Poindexter [23], the last mentioned being the chief decision in that catena of cases in Pennsylvania which forms an exception to the great current of American authority on the question of the negotiability of deposit receipts.

It does not seem to be practicable to draw a sharp distinction between the form of the document and the intention of the parties as determining factors in regard to negotiability. The intention of the parties must be gathered from what they have said. If they have expressed themselves in a document which is negotiable in form, must they not be deemed to have intended the document to be negotiable? If the intention is to be inferred from the form, the distinction between the two is for the present purpose somewhat shadowy.

Ewart in his book on Estoppel by Misrepresentation [24] contends with great ingenuity that ambulatory intent is more truly

the distinguishing characteristic of negotiable instruments than the characteristics usually assigned. But the intention is nevertheless to be gathered from the form, for he states by way of a general rule that instruments are negotiable "when it appears from the nature or terms of the contract that it must have been intended to be assignable free from, and unaffected by, such equities"[25] *i.e.*, the equities existing between the original parties.

It is questionable whether it is justifiable to make any distinction on historical grounds between American law and English law[26] in regard to the documents now under discussion. The origin of deposit receipts is probably correctly ascribed to the practice of the goldsmiths of giving, for moneys deposited with them, receipts in the form of promissory notes payable to the bearer on demand or to the depositor or his order. The statute 3 and 4 Anne, chap. 58, does not of course determine the question of the negotiability of such instruments unless they are in fact promissory notes. In each case we must first answer the question whether an instrument is negotiable by the law merchant or under the Bills of Exchange Act. There does not seem to be any reason why that question should not be determined on precisely the same principles whether it be in England, Canada or the United States, and the determining factor in each case is the form of the instrument.

In conclusion it is desirable to define the legal status of the practice of receiving deposits and that of issuing deposit receipts under our Bank Act. Both practices, as indicated above, are very ancient ones and are part of the general business of a banker. Neither one nor the other is expressly authorized by the Bank Act. The receiving of deposits and the honouring of cheques is probably the primary function of a bank. But it is to be noted that in section 95, which authorizes the receiving of deposits under certain circumstances from persons who are in other respects incompetent to contract, in section 96, which contains special provisions in regard to trusts to which deposits are subject, and in section 126 which excludes the operation of any statute of limitations in regard to deposits, it is assumed that a bank may receive deposits. Schedule B to the Act enumerates among the liabilities of a bank deposits payable on demand or after notice or on a fixed day (cf. 17 O. R., at p. 583). The

provisions of the Bills of Exchange Act in regard to cheques or a bank assume that there may be funds on deposit to meet cheques. But in neither act is there any power specifically authorizing a bank to receive deposits in cases other than the special ones mentioned in section 95 of the Bank Act. Section 96 refers however to deposits " made under the authority of this Act." Where is this authority to be found? It is submitted that it is to be found in the clause of 76 which authorizes the bank to " engage in and carry on such business as generally appertains to the business of banking." This business of banking also includes the issue of deposit receipts. The preceding clauses of the section might possibly authorize the practice but there seems to be no need to strain their language to cover the case. There does not seem to be any valid ground for questioning the legality of either practice. If deposit receipts are issued in the form of notes payable to bearer on demand and intended for circulation, they will doubtless come within the provisions of section 61 and should be included in the general note circulation of the bank. That, however, is another story.

[1] Banking and Bills of Exchange, pp. 216, 217.

[2] Banking and Bills of Exchange, p. 216.

[3] 1890, 44 Ch. D., 76.

[4] Lindley, L. J., at p. 83.

[5] Bills of Exchange Act, sec. 21.

[6] Incorrectly cited, supra, p. 11, as an authority for the general proposition that a deposit receipt is not a negotiable instrument.

[7] The Law of Banking, 2nd ed., 1906, p. 560; cf. Halsbury, Laws of England, vol. 2, 1907 (article by Paget on Bankers and Banking), p. 589.

[8] Cf. Mander v. Royal Canadian Bank and Saderquist v. Ontario Bank, referred to below.

[9] May, C. J., at p. 516; cf. Talbot v. Cody, 1875, 10 Ir. R. Eq., 138, referred to at p. 514, in argument.

[10] " Accountable receipts," as they are styled in Grant on Banking, 5th ed., 1897, p. 122.

[11] Re Central Bank, 17 O. R., at p. 585.

[12] 1869, 20 C. P., 125; 1871, 21 C. P., 492: "which sum shall be accounted for by this bank to the said J. M."

[13] 1879, 30 C.P., 255.

[14] 1870, 17 Gr., 313.

[15] 1887, 14 O. R., 586; "for which this bank will account to the said S. S."

[16] Supra, p. 9.

[17] Supra, p. 12.

[18] 1874, L. R., 5 P. C., 461; S. C., 1870, 15 L. C. J., 122 (Court of Queen's Bench); 1869, 13 L. C. J., 213 (Court of Review and Monk, J.)

[19] 17 O. R., at p. 584.

[20] Banks and Banking, 4th ed., 1903, s. 299.

[21] Cf. 5 Cyc., 520.

[22] 3 Pa. St., at p. 347.

[23] 1843, 6 Watts & Serg., 231.

[24] Chapter XXIV; cf. article in 16 L. Q. R., 135, 140, 142.

[25] Quoted from Re Agra & Masterman's Bank, 1867, L. R., 2 Ch. at p. 397.

[26] Cf. supra, p. 9.

JOHN JARVIS, *BANKER?*

"The atrocious crime of being a young man."—WILLIAM PITT, *Earl of Chatham.*)

ALEXANDER GORDON TAIT.

I.

JARVIS was one of the bank's good bargains. The manager of the Appleboro' branch of the —— Bank of Canada was convinced of that long before the three months' probationary period was at an end. The accountant, too, was delighted, for he had a junior who did not require incessant watching as one would a child laboriously forming his first letters. Within a few weeks of joining the service, Jarvis had proved himself to be a careful, industrious and useful officer. He was punctual, civil, neat, prompt; was possessed of a plentiful supply of good sense, and, above all, was blest with an excellent temper which helped him to meet with equanimity both the rough and the smooth as they chanced to be encountered in the course of a day's work. In short, he was a junior of the most desirable kind, requiring only such developing factors as good training, time and experience to place him well up in the ranks of his fellow officers.

Now, John Jarvis was the youngest son of Enoch Jarvis, a successful farmer long established at Appleboro'. From modest beginnings, he had prospered until, at the time to which we refer, he was the respected owner of valuable farm property covering some hundreds of acres—wheatfields, cornfields, pasturelands, orchards,—in fact, in many respects, he was the "Squire Oakfield"[1] of the county. Of course, this position of affluence had not been attained without unremitting industry and the very closest attention to business. Although, principally on account of increasing years, a farmer of the "old school," he welcomed heartily all modern methods in farm work and never tired of enjoining his sons to be up-to-date or they could never hope to succeed. By far the most valued and important cus-

[1] Rae's "Country Banker," page 57.

tomer on the books of Appleboro' branch, were Farmer Jarvis for any reason to transfer his patronage to the Bank of —— down in Long Valley, the —— Bank of Canada might almost as well close up its little branch at Appleboro'. For old Enoch Jarvis' influence was paramount. Usually a large depositor; at certain seasons a safe and diffident borrower; what more could the manager of the branch, or his Head Office, desire? Nor should we omit to mention that the entire Jarvis family,—that is, the good mother and four grown-up sons and three growing-up daughters,—each had individual savings or housekeeping accounts with the bank, and that, consequently, their respective and collective goodwill was highly prized by the manager of the ——— Bank of Canada.

We have said that old Enoch Jarvis' influence was paramount. We should have said that the influence of Enoch Jarvis *and his household* was paramount, for certainly no function in the neighbourhood, social or other, was ever complete without the presence and support of a strong contingent from Oak Grove Farm, the hospitable home of the Jarvises. And John Jarvis (our bank junior), healthy animal that he was, was wont to throw himself with genuine gusto into all the proceedings, whatsoever they might be. While the three elder brothers were all profitably employed on their father's farm (two having taken both graduate and post-graduate courses in scientific agriculture, and the third, a graduate course in agriculture and a primary course in veterinary medicine), John, strange to say, had never been much attracted to farming or farm-work. He was always ready, of course, to lend his sturdy assistance in definite routine jobs on the farm, such as salting the cattle, thistle-cutting in the pastures, spraying in the orchard or driving over to the railroad depot for stores. But his natural inclinations and abilities lay in the direction of some more intellectual (!) occupation than farming. When, therefore, the manager of the little branch bank (who had an observant eye for promising-looking juniors) suggested the entrance of John into the service of the bank, Farmer Jarvis had consented, though a little disappointed that any one of his sons should have wished to become anything but a successful farmer. So John had been handed a form of application for clerkship to fill up; a medical officer's report to be completed and a very elementary examination paper to answer.

Having in due course satisfied the Head Office on matters moral, social, physical and educational, he had been duly entered (as we have seen) as a junior on probation on the staff of the —— Bank of Canada, full of youth and energy and spirits; of hopes and ambitions.

John, from the first, had been thoroughly happy in the service of the bank. The hours were not long in the tiny three-man branch, nor was the work required of him over-taxing nor in any way difficult after the first fortnight or so. He even found leisure to help, at times, on the farm as occasion or emergency might require; he was also able to keep his many personal engagements, for he was one of the most popular of young men in the neighbourhood!

Everything had gone along famously in this fashion for about a year, when—

As a thunderbolt from a blue sky, there came one morning to Appleboro' from Head Office urgent marching orders:—

> "Please instruct Mr. John Jarvis to proceed at once
> "to —— Street Branch, Mammoth City....."

A simple enough sentence to dictate to a stenographer; a simple enough one to be read and re-read, but a sentence on account of which many a good man has gone to the dogs, or, worse still, to the devil. Removed suddenly from the midst of all the influences and intimacies of childhood and early youth and transplanted without one thought into an utterly strange and alluringly novel environment,—with its new ways, its new standards of conduct, its new interests, its new companions,—many a fine fellow, breaking under this supreme test of character, has absolutely and literally gone to pieces. (Witness the case of ———— of the ———— Bank, Vancouver. Home, and all that home meant, nearly three thousand miles to eastward; a few wild oats; a sudden temptation; a man-hunt across the continent; a surrender; a judge impassively passing sentence; a felon's cell! Or, again, take the more recent case of ———— of the Bank of ————, somewhere near Hamilton, —*poor fool!* A pittance, called a "salary"; accumulating and seemingly insurmountable debts; despondency, then despair; a purloined revolver; a startled nightwatchman; a pitiful sight!

Did not all the newspapers in the country chronicle these painful events with the air of everyday occurrences?)

The news of John's transfer to Mammoth City created, as may be imagined, no little stir both within the Jarvis household and among a wide circle of friends and acquaintances. Most of the good people were ready enough with their congratulations and hearty wishes for John's success in the busy metropolis, but to old Enoch Jarvis and Martha Jarvis, Mammoth City seemed a great way off, and, in spite of parental pride at their son's first step upwards in his chosen career, they could not help at the same time feeling some apprehension at the thought of John's isolation in the great city. But the mother gained some comfort by assuring herself that the President of the bank himself, and the General Manager and all the chief officials lived in Mammoth City and that they surely would keep a watchful eye on their John.

Towards dusk of the second day following the receipt of instructions from Head Office, John, after multitudinous and hurried farewells, found himself in the stifling sleeper of the Seaboard Express, being borne rapidly through the night towards Mammoth City. By virtue of this twelve-hour train journey was our Country Mouse to emerge at an early hour the following morning—a Town Mouse!

II.

John Jarvis had never before left home except for brief visits in the vicinity of Appleboro'. Here he was, at a susceptible (even critical) age, a stranger among strangers. But he was far too full of pluck and spirits to allow himself to succumb to that peculiar form of mental distress which we all have suffered, in a greater or less degree, under the depressing sensation of solitude in a vast city, when we have been rudely brought to realize, perhaps for the first time, what *pawns* we really are.

Jarvis' letters home were filled with "first impressions,"—the city in general, so far as he had seen it; the hotel where he had stayed for the first two days; his hunt for a boarding-house (for the bank kept no list of approved boarding-houses, neither had it a living-club of its own for the better accommodation of

its unmarried officers); of the room he had finally taken, with its bed, two chairs, mirror and chromos; of a brief call at Head Office and what the Chief Inspector had said; of his new manager at —— Street branch; of the remainder of the staff, his new fellow officers; of a wearisome search of three days and nights (from his first balance day) for a contemptible difference in his ledger, and not his own fault either; of the gymnasium classes to which the bank subscribed, and of the invincible seven who had come out victorious in the Bankers' League; of the church he had chosen to go to out of many churches,—all these and many other diverse matters filled his frequent and lengthy letters, to the interest and diversion of the home household.

Jarvis began well at his new work and continued to give his manager the same satisfaction that he had previously given at Appleboro'. He steadily increased his value to the bank by picking up something of the work on other posts without neglecting his own duties, and, in a short time, gained a very tolerable knowledge of the bank's rules and regulations for the conduct of its routine. Fortunately for him, the accountant, while being a good disciplinarian, was always approachable to the staff and ready to explain to any officer whatever might appear unreasonable or difficult to understand. Hence, by degrees, Jarvis began to think in all sincerity that there was not much after all in "banking," and that by the time he had filled the various posts in the office up to that of a duly appointed accountant, he would have become a fully qualified "banker," ready to fill a branch managership with ability and distinction whenever and wherever the exigencies of the bank's service should occasion such appointment. But he was soon to receive a rude shock. It came about in the following manner.

In the boarding-house where Jarvis enjoyed "parlor and piano privileges," (!) transients were frequently taken to fill in the intervals between the comings and goings of regular boarders. No discrimination was made in this well-conducted establishment as to age, sex, standing, creed nor nationality. Jarvis, therefore, often found himself called upon to be civil to a great number of uncongenial people, but it afforded him the opportunity of becoming a very fair judge of character, which is invaluable, as we know, to the practical banker. One of the

flying visitors, on the occasion to which we refer, was a young New Yorker, and, like the majority of his countrymen, he "wanted to know things." Having ascertained in less than five minutes that Jarvis was in a bank, in fact, in the —— Bank of Canada,—in the —— Street branch of the —— Bank of Canada,—a ledger-keeper in the —— Street Branch of the —— Bank of Canada,—he (the New Yorker) immediately began to ply Jarvis with a rapid fire of questions on the subject of banking in Canada in general. Jarvis was glad to be able to find satisfactory answers to many of his enquiries, but was chagrined not to be able to reply to the following apparently simple questions:—

(1) What security is held against Dominion Government notes, and to what limit may they be issued?

(2) What amount of gold, silver and copper coin, respectively, is legal tender in Canada?

The next day Jarvis asked the accountant. But the accountant did not know; he supposed it must be in the Bank Act. (!) This was surprising, for he was an excellent accountant and knew the bank's book of rules and regulations from cover to cover. After a little surreptitious search in the manager's room, a copy of the Bank Act was found, but no enlightenment on either subject was there. If a bank officer of the rank and file wishes to know anything, to whom, pray, is he to turn? To his accountant, you say; failing him, to his manager. Well and good, if these conscientious and hardworking officers should be qualified to act as instructors or tutors in banking matters not immediately concerned with clerical routine. But how many are? Our bank officers (we refer, of course, to those of the middle and junior grades) have no instructors, nor tutors nor schoolmasters (call them what you will); neither have they schools, nor institutes;[1] nor courses, nor scholarships, nor diplomas, no form of preparatory training or of instruction to properly fit them for their profession,[2]—*nothing whatever* beyond severe and constant drilling with a view to regularity and uniformity in the carrying out of internal clerical routine.

[1] We believe we are correct in stating that only two or three of our banks have even libraries available to the general staff.

[2] See "The Bank Officer as Student," by A. Gordon Tait, Vol. XIV, Oct., 1906, pages 42 to 57.

The more Jarvis thought on these things, the more he marvelled. When he remembered the graduating certificates of his three brothers (mere farmers), hanging in their frames at home, he marvelled still more.

We deeply regret to say that after Jarvis had been a year or more in Mammoth City, a change came over him,—not by any deliberately adopted attitude, but unconsciously, insidiously, —nevertheless a change, and not a change for the better. Jarvis, in spite of himself, became listless and mechanical in the performance of his duties, and was subdued, even glum, where hitherto he had been conspicuously bright and cheerful. His letters home, which latterly had become less frequent, now habitually began with the apology, "Only time for a few lines," or something to that effect. The ever-changing procession of visitors at the boarding-house seemed to become more and more uncongenial, even distasteful, yet Jarvis did not care to move elsewhere without the certainty of bettering his domestic arrangements. He found it difficult enough to make ends meet (sometimes they refused to meet) on the salary he was receiving. Although his parents could readily have supplemented his income with an allowance, the rule in the Jarvis family was that each son in turn should make his own way with a minimum amount of assistance. He gradually began to give up going to church; it was very pleasant to be able to lie in bed without having the "nine o'clock rule" (which every bank officer knows) hanging over one's head. Lastly, Jarvis missed a very great deal the constant social intercourse to which he had always been accustomed at Appleboro'. The worthy people of Mammoth City knew not of this "bachelor-man in rooms," and he often found his leisure time hang heavily. He could not be expected to be for ever frequenting such public places as the parks, the libraries and reading-rooms, nor even the gymnasium and swimming bath. Often, fretting at being cooped up in his tiny room in the boarding-house, he would hastily put on hat and coat and wander aimlessly by the hour up and down the brilliantly lighted streets, getting some satisfaction from elbowing through theatre crowds or standing in a niche of a crowded street car watching the people.

(It may be remarked by the reader that it must have been Jarvis' own fault that he had not made some good friends, or even acquaintances, during his twelve months in Mammoth City, for "many fellows make friends wherever they go." True enough, and when one of those same "fellows" becomes a branch manager, he will have no difficulty in working up in a few months extensive business connections, but at the expense of earning for himself the not very enviable soubriquet of "the dead-beat's friend.")

At this critical juncture in his career Jarvis should have been taken in hand by—we hardly know by whom,—say, by some officer older than himself, for he was disheartened and disgruntled with things in general and was beginning to run to seed. It was simply encouragement of which he stood in need, for he had no real vices, either naturally or by recent acquisition. But it was nobody's business to take him in hand, to knock him into shape again and to restore him to his former good state of mind and spirits. So matters continued to drift on.

Here we take leave of John Jarvis. It would not be edifying to accompany him further on the down grade. We cannot say as to what ultimately became of him, but we know that he is no longer a "banker." Splendid material thrown away!

For the brief tale which we have had the temerity to try to tell, we beg the generous indulgence of the reader for its many blemishes.

EXPRESS COMPANIES AND THE PUBLIC.

A GOOD many of us are interested at present in the fact that the Board of Railway Commissioners has under consideration the drafting of a form of contract to be used by carriers and express companies in dealing with the public.

The express companies were put under the jurisdiction of the Board by the statute 6 Edw. VII, chap. 42, section 27, which is now become R.S.C. (1906) chap. 37, sections 348 to 354. Section 353 of the latter declares that "no contract, condition, by-law, regulation, declaration or notice, made or given by any company or any person or corporation charging express tolls, impairing, restricting or limiting the liability of such company, person or corporation with respect to the collecting, receiving, caring for or handling of any goods for the purpose of sending, carrying or transporting them by express, or for or in connexion with the sending, carrying, transporting or delivery by express of any goods shall have any force or effect unless first approved by order or regulation of the Board."

Upon this legislation it became necessary, from the 13th of July, 1906, that express companies should get the Board's approval for the forms of contract already in use. The Board ratified these, first, by an order dated the 13th of November, 1906, continuing such contracts until the 1st of May, 1907, and then again further on the 23rd of May of the latter year. The Board is still deliberating, and the various interests at stake are still endeavouring to have their influence in the final result, one of the most important points with regard to which will be that a matter that has heretofore been determined by the contractual laws of the various provinces will have been put upon a common basis throughout the whole Dominion. In the meantime, it may be worth while to know how shipper and carrier stand with regard to one another as things are.

A case in point that was decided here in June of last year in the Court of King's Bench may be taken as a text.[1]

[1] Dom. Express Co. vs. Rutenberg, 18 K. B., p. 50.

A trunk was shipped on behalf of one Rutenberg at Brantford, to be sent to an agent of his in Winnipeg. The trunk never reached its destination, having been accidentally burned in the car in which it was placed by the railway company to which the express company handed it for carriage. Rutenberg sued the express company for 900 odd dollars, the alleged value of the goods contained in the trunk.

It turned out that the contract between the parties was set out in the receipt given by the express company's driver to the plaintiff's agent. On this document the name of the shipper was written in first, and then in the succeeding blank space was inserted "one trunk." On the same line and in print were the words "said to contain." The plaintiff's agent giving no information on this point nothing was filled in thereafter. On the next line were the printed words "valued at," after which was drawn a long pencil stroke by the express company's driver, the shipper having given no information on that head. Then the name and address of the consignee were taken down; and there followed the company's printed conditions with the notice in heavy lettering"*Read this Receipt,*" the whole undersigned for the company by the driver. These printed conditions were simply the continuation of the sentence which was begun by the words "Received of," and go on to say "one trunk," etc., "which we undertake to forward to the nearest point to destination, reached by this company, subject expressly to the following conditions, viz.:

"This company is not to be held liable for any loss or damage, except as forwarders only, nor for any loss or damage by fire, by the dangers of navigation, by the act of God, or of the enemies of the Government, the restraints of Government, mobs, riots, insurrections, pirates, or from or by reason of any other hazards or dangers incident to a state of war. Nor shall this company be liable for any default or negligence of any person, corporation, or association, to whom the above described property shall or may be delivered by this company, for the performance of any act or duty in respect thereto, at any place or point of the established routes or lines run by this company, and any such person, corporation or association, is not to be regarded, deemed or taken to be the agent of this company, for any such purpose, but, on the contrary, such person, corporation or association,

shall be deemed and taken to be the agent of the person, corporation or association from whom this company received the property above described. It being understood that this company relies upon the various railroads and steamboat lines of the country for its means of forwarding property delivered to it to be forwarded, it is agreed that it shall not be liable for any damage to said property caused by the detention of any train or car, or of any steamboat upon which said property shall be placed for transportation; nor by the neglect or refusal of any railroad company or steamboat to receive and forward the said property.

"It is further agreed that this company is not to be liable or responsible for any loss or damage to said property, or any part thereof, from any cause whatever, unless in every case the said loss or damage be proved to have occurred from the fault or gross negligence of said company or their servants; nor in any event, shall this company be held liable or responsible, nor shall any demand be made upon them beyond the sum of $50, at which sum the property is hereby valued, unless the just and true value is stated herein, etc.....The party accepting this receipt hereby agrees to the conditions herein contained."

The receipt was taken by the plaintiff's agent, and the company was left to govern itself in the matter of charges by the information given to it by him. It was explained on behalf of the company that it made two sorts of charges, first the charge of $5.00 for every 100 lbs. weight when the value was not declared to be over $50; and then secondly, the same charge plus an additional charge of 15c for over $100 worth or fraction thereof, when the value was declared to be over $50. The meaning of this from a business point of view was explained as being that the company charged not only in proportion to the weight and bulk of the parcel carried, for which in its turn it would be charged by the railway company, but also in proportion to the exact risk that it might undertake, and that in its turn it insures with an insurance company in the ordinary course of events. The bill of lading therefore further stipulated "Nor in any event shall this company be held liable or responsible nor shall any demand be made upon them beyond the sum of $50, to which sum the said property is hereby valued, unless the just and true value thereof is stated herein."

Some verbal evidence was attempted to be made by the

shipper that the value of the trunk at the time of shipment was not asked. The court ruled that this did not affect the matter, and that it must be taken as proved that the value was not declared. All that was made known to the express company was that the consignment was a trunk.

Further to clear away the facts of the case it was held that the company had not proved the fire to have been brought about by some cause which it was powerless to prevent, namely, spontaneous combustion while the trunk was in transit. In default of such evidence it had to be assumed that the defendant was in fault. The sole question remaining was as to the extent of its liability. We propose to examine the various arguments on this point brought forward by the parties, and considered in the judgment, which ultimately condemned the express company to the payment of $50.

The plaintiff based his cause particularly upon article 1676 of the civil code which says:

"Notice by carriers of special conditions limiting their liability is binding only upon persons to whom it is made known and notwithstanding such notice and the knowledge thereof, carriers are liable whenever it is proved that the damage is caused by their fault or the fault of those for whom they are responsible."

The plaintiff urged that he was not bound by the special conditions contained in the receipt or bill of lading, because the terms of the bill were not expressly recited and made known to him. He contended that he had not acquiesced in or had knowledge of or agreed to the conditions of the receipt limiting the defendant's liability. He set up that the receipt was not a contract, and the mere notice not binding on him.

To this the defendant replied that the matter was absolutely one of contract and not of notice; and that the contract was perfectly legal and binding. The court, in the course of the judgment, referred to the "common delusion that such stipulations would not hold." This delusion, as was pointed out in the argument on behalf of the defendant, appears to be founded upon a confusion between contracts and notices. Such confusion can no longer exist for us after the famous case of Glen-

goyle S. S. Company vs. Pilkington,[1] the gist of which was that article 1676 was not founded upon considerations of public order, and that while it applies to the case of a unilateral general notice, which may even be known by the shipper, it has nothing whatever to do with the case or special notice or special contract [2] by either of which it is perfectly competent to the carrier to limit its liability in any way, and perhaps even to contract itself out of all liability whatever except the duty to carry. The notice referred to in 1676 it was pointed out was some sort of general advertisement open to the inspection of the public, such as a notice hung upon the walls. This can certainly not be binding upon any member of the public until made special to him; and, even though he may know of the notice, yet if he have not by some special act made it a part of his contract, manifestly he cannot be bound by it. It was also pointed out that the English version of article 1676 in using the words "made known," does not represent the intention of the codifiers, which is really expressed in the French version, "qui en ont connaissance." [3] But as was pointed out in the Glengoyle case it is quite competent to the carrier to make its notices special to the shipper by way of the contract, and to bind him thereby completely. This principle, it may be said, is recognized in the law of carriers far beyond the limits of the Province of Quebec.[4] It was thus urged on behalf of the company that it might restrict its liability in three ways, firstly, to a certain amount; secondly, to certain situations, and thirdly, and in either case, to circumstances in which it or its servants were guilty of fault or gross negligence. To be specific, the defendant held that it was legally entitled to limit its liability in this particular case to $50; to except the case of loss or damage by fire; and, if it had been proved that fire was not the cause of the loss, then it was entitled to demand quittance of liability on account of there having been no proof of its responsibility for whatever caused the loss.

All this amounts to the argument that the express company is entitled to make any bargain it pleases with its customers, so

[1] 28 S. C. R. 146.
[2] C. F. Mignault, Vol. 7, p. 387.
[3] See Dionne vs. C. P. R., M. L. R., 1 S. C. 68.
[4] Compare Words and Phrases, verbo notice, Vol. 5, p. 4840.

long as it does not attempt to contract itself out of responsibility for its own fault or gross negligence.

The judgment in so far as it deals with the arguments of the express company in this connection is rather lacking in clearness; but the court seems to have based its conclusion upon the interpretation of the contract without questioning the legality of the terms. It recited the phrase of the contract "loss or damage by fire, by the dangers of navigation, by the act of God;" and then referred to the fact that the company had pleaded the destruction of the goods from fire by spontaneous combustion. It held that the destruction by fire was proved, but that the cause of the fire was not proved. It seems to have been considered by the court that the sort of fire that would exempt the carrier from liability, must be something of the same extraordinary character as that which is called the act of God, something due to the same unforeseeable agencies as those which bring about the dangers of navigation, war, riot, etc. Upon such a construction it is held by the court that the clause should be construed strictly against the carrier. So that unless the carrier proved not only the fact of fire, but also the fact that the fire was caused by some agency such as that alleged, its own condition would not have been fulfilled. The extraordinary cause alleged by the carrier in the case under discussion having been spontaneous combustion, and the fact of spontaneous combustion having been proved by the carrier, it was held by the court that there was in fact no exemption under this clause of the contract; rather, on the grounds of evidence, it must be assumed that another clause of the contract was called into effect by the circumstances, namely, that the case disclosed was one of fault on the part of the carrier. An accident had occurred to the goods while in the carrier's charge. The carrier had not shown that this accident was due to something beyond its control, and that therefore there had been negligence on its part.

The public may gather from this, therefore, that such stipulations on the part of the carrier are, in the present state of the law, legal and will be upheld.

The next stipulation to be enquired into is that which reads:

"Nor in any event shall this company be held liable or reponsible nor shall any demand be made upon them beyond the

sum of $50, at which sum the said property is hereby valued, unless the just and true value thereof is stated herein."

It was taken by the court as proof that the value was not declared by the shipper, and that all that was made known to the carrier was that "one trunk" was being shipped. The court said:

"Now when the sum of $920.75 is demanded from the appellant (the carrier) for the loss of this 'one trunk,' said to contain one trunk valued at, it seems necessary to conclude that it was reasonable for the appellant to stipulate that its liability would not exceed $50. The respondent's position is not bettered by the fact that their agent, McClurg, was too much hurried to procure a proper bill of lading for this valuable shipment of goods. Still less is it bettered by the fact that the respondents themselves, though aware of this very common stipulation, relied upon the common delusion that it would not hold.

"Shippers may justly claim that the other clause of the form of contract should be strictly construed against the carrier for the reason that its servants are usually provided with contract forms in which these conditions are printed and which shippers are particularly coerced into accepting, the express agent being given no discretion to strike out or change the conditions, but this stipulation as to the known liability for more than $50, stands in a different light and can only injure those who neglect to do a fair and reasonable thing, namely, to say what their goods are worth."

This conclusion is supportable on other grounds as well as by the fact that the stipulation was made in the contract and accepted in a manner considered by law to be sufficient. For one thing it would be absurd and unjust that the shipper should be allowed to make use of those words of the bill which show that the trunk was shipped, and that the obligations of the carrier were in respect to a trunk; and should not at the same time be bound by the other terms of the same sentence that spoke of the trunk, which other terms expressly limited the company's obligations. Then, too, it is an elementary part of the law of obligations that (C. C. 1074):

"The debtor is liable only for the damages which have been foreseen, or might have been foreseen at the time of contracting

the obligation, when his breach of it is not accompanied by fraud."

Obviously the only hint of the damages that might be foreseen which the way-bill in the case before us disclosed, was the carrier's limitation to $50, which the shipper's silence as to any other value left alone to be considered. This is to say that no damage could have been foreseen beyond the extent of $50, within which limit proof had to be made of the actual value lost.

Then again, art. 1677 C. C. might be invoked, which declares:

"Carriers are not liable for large sums of money, or for bills or other securities, or for gold or for silver, or precious stones, or for other articles of considerable value, contained in any package received for transportation, unless it is declared that the package contains such money or valuable articles."

This article would not of course apply to all goods, but might possibly be held to apply to all those which did not by their appearance accord some indication of their proper value, for the same article goes on to say that:

"The foregoing rule nevertheless does not apply to the personal baggage of travellers, when the money or the value of the articles lost is necessarily of a moderate amount and suitable to the circumstances of the traveller, and the traveller is entitled to be examined on oath in proof of the value of the thing composing such package."

An examination of this article shows a distinction between the two paragraphs, the second being the case of what is called necessary deposit, and the first one of a purely voluntary contract. In the case of the traveller he is forced to take his personal effects and moneys with him. He is practically unable to get any other carrier for them, and he is thus entitled to bind the carrier to a moderate amount of undisclosed valuables. But in the case of the forwarding of packages not connected with any traveller, the carrier must be put in a position to know the character of the goods which he carries in order that he may prepare against his risk. He is not put in such a position when all that he has to go on is the appearance of the package, and when in reality the package contains goods of much greater value than its appearance would lead one to suppose. To hold the carrier responsible at one moment of the contract for a package and at

another moment for a certain quantity or quality of unforeseen valuables, would be to change the nature of the contract during its course. This the law will not allow.[1]

And outside the terms of this particular article (1677) it is against reason to suppose that the shipper can keep to himself all the advantages of uncertainty, and can put upon the carrier all the disadvantages of it. He cannot rate the risk, or allow the carrier to rate the risk, as a small one when the carrier's charge is in question, and as a large one when he calls upon the carrier to make good the loss.

But the other points raised by the carrier in this case did not meet with the same success; although it still appears that the court arrived at its conclusions upon them not by disregarding the contract as shown in the way-bill or receipt form, but by interpreting them in relation to other parts of the same contract.

The first of these other contentions was that the express company was not held to be liable for loss, "except as forwarders only." This was essentially to assert that the express company is not itself a carrier but simply an agency for the purpose of taking the goods to the carrier.[2] The court said:

"To forward goods is of the nature of a carriage contract and the undertaking to forward does not imply that the actual carriage is to be done by any other than the forwarder.

"Under the provisions of a carriage contract substantially identical with those of the one now in question, it was held by Boyd, Chancellor, and Justices Maclaren and Mabee, in the Ontario Divisional Court case of James vs. Dominion Express[3] in substance that the obligations of an express company were those of a common carrier and not, as was argued for the defendant, simply those of an agent of the forwarder.

"In the remarks of the Chancellor is to be found the following statement:—

"'According to the well settled rule of liberal construction in these carrier cases, the agencies they employ for the transaction of their business (whether independent lines of railway or

[1] Cf. English, carrier, Sec. 1, Blackensdale vs. Hart, 6 Exch., p. 789; A. & E. Encyc., Vol. 6, p. 402; Fuzier Herman, Chemin de fer, 3664; Mignault, Vol. 7, p. 391.

[2] Compare Moore, on carriers, p. 69; Bouvier, verbo Forwarding merchants.

[3] 6 C. R. C. 309.

not), are all counted employees, agents or servants of the contracting company. The appellant was therefore a carrier.'"

The judgment passed on to consider the other point raised by the express company in the following terms:

"The next provision of the contract relied upon by the appellant, is to the effect that the appellant was not to be responsible for loss or damage due to the act or fault of railways or carriers to whom the goods might be expressed and who, in the terms of the contract were not to be deemed and taken to be the agent of the person from whom this company received the property above described. It being understood that this company relies upon the various railways and steamboat lines of the country for its means of forwarding the property delivered to it to be forwarded.'.....It does not, however, appear in proof that there was any fault in the delivery of the trunk, 'at any place or point, off the established routes or lines run by the appellant.' On the contrary, it appears that the appellant messenger continued in charge of the goods in the car in which it contends that the trunk was."

"Further I consider that the way-bill, produced by the appellant, is additional evidence of the possession of the trunk by the defendant. This way-bill is headed 'Dominion Express Company————Freight way-bill, Brantford, Ontario to Winnipeg, Manitoba,' but it does not have upon it the name of any railway company or other carrier. This contention therefore does not relieve the appellant.

On the whole then, it may be said, that while express companies are liable as carriers and are responsible for the railways employed by them to carry, these results come from the other wording of the contract form, although indeed in a manner contradicted, and intended to be contradicted, by other expressions in that form, which the courts regard as insufficient to counteract the general obligation expressly undertaken by these companies in this form. On the same grounds the rest of the contract must rule as made, the restrictions of liability being perfectly legal. These points are made with reference to the Quebec case; but there is nothing exceptional in this regard in the law of the Province of Quebec.

There are certain other points in the case which the nature of the facts, as found by the court, made negligible; but it may

here be said that until these contract forms are changed it is still a matter for argument whether express companies may not stipulate against responsibility for anything or everything short of fraud, or of neglect so gross as virtually to come to the same thing as fraud. This has been maintained at length in France by a learned commentator in the year 1890,[1] who was cited by the Supreme Court through Taschereau, J., in the case of Glengoyle vs. Pilkington. The opinion of this commentator, Mr. Sarrut, may be translated as follows:

"Contrary to the opinion that has prevailed, at least in so far as concerns one's own fault, the clause of exemption from responsibility ought to produce its plain and entire effect without any necessity to distinguish between one's own fault and that of others. The direct responsibility of the agent is the indirect responsibility of the principal. It is legal and valid with this one condition that the fault do not amount to fraud. In other words, responsibility for fault can be contracted against; and one will remain held only for the consequences of one's fraud or for faults so grave as to be equal to fraud."

And he goes on to say:

"It is a sort of adage in doctrine and in jurisprudence that a stipulation that frees the debtor of the obligation from having to make good his faults is immoral and contrary to public order. It seems, however, that considerations of morality and of public order are particularly limited to intentional acts which are confined to delicts, fraud and grave fault amounting to fraud. How does it really concern morality and public order if a special clause of a contract discharges me from the ordinary regular vigilance and authorizes me to commit, without having to answer for the consequences, those every day faults which imply no fraud on my part? Why, particularly, cannot a carrier say, 'I am bound in principle to carry these goods to their destination in their present state, but discharge me from a responsibility so strict; consent not to ask me to make up those damages and losses which do not result from any grave fault on my part, any inexcusable fault which to ordinary prudence would be out of the question. In exchange I offer you a reduction on the price of carriage. If the shipper accept, how is such a contract immoral and illegal."

[1] Dalloz, 1890, 1. 209. Note.

And after comparing this contract with the principles that allow the limitation of liability, if any, to a certain amount, and that allow the ordinary contract of insurance, he concludes:

"From these three given premises, the freedom of contract, the power of limiting by a penal clause the amount to be paid to a small outside sum, and the validity of the contract of insurance, one must conclude the absolute legality of a clause of limitation of liability pure and simple so long as the fault does not amount to positive wrong doing."

This opinion has been followed in France and Quebec.[1]

Granting then the validity of such a clause, it would also seem to be open to argument that the burden of proving that the cost of damage to the goods was due to a fault so grave as not to be contracted against, is upon the shipper. The French authorities are numerous in favour of this contention.[2] Expressions in the same sense are to be found in our own authorities.[3] The English authorities appear to be the same.[4]

This point does not seem to have been thoroughly faced in the judgment that we have been considering. It seems to have been held that since the express company alleged that the fire was due to spontaneous combustion it must be held to have taken the burden of the proof upon its own shoulders; and having failed to discharge that burden the fire had to be held to be due to the fault on the part of the express company. It cannot be said that this case is a final authority on the point of the burden of proof.

These remarks will serve to show the situation and its possibilities so long as the contract forms of express companies remain as they are. These forms amount, as pointed out in the judgment discussed, to a coercion of the public, since at the time of the contract the shipper deals not with a party who will come to proper terms with him, but with an agent who cannot change the terms which his principal has put into his hands. The public can only stop this condition of affairs by seeing that the form of contract is changed.

[1] Dalloz, 94, 1. 441, Queen vs. Grenier, 3 S. C. R. 42; Miller vs. G. T. R., 34 S. C. R. 45. The case of Rendall vs. Davidson in a contrary sense would seem to be no longer of authority.

[2] Dalloz, 1876, 1. 133; Sirey, 1888, 1. 465; Dalloz, 1902, 1. 513, etc.

[3] Mignault VII., 388, Drainville vs. C. P. R., 22 S. C. 480; Mathys vs. Majesty Liners, 25 S. C. 426 and 436. con. Brasell vs. G. T. R., 11 S. C. 150.

W. F. CHIPMAN.

THROUGH A BANK WINDOW.

HAVE you ever thought of the many aspects of life to be observed by casually glancing from a bank window? It is a trivial question, but life is made up largely of trivialities, and perhaps we may sometimes benefit by such a paltry action as pausing to look from our office window for a few brief moments.

It is true that in our large cities, the average bank clerk has other things to do than gaze at the life and bustle of business life that is passing on the other side of the plate-glass; but then, he knows it is there, and perhaps, as a rule, the sight contains no novelty for him and he would rather not see it.

Yet consider the contrast between the view from a bank window in the heart of a large city, to the scene of peace and quiet that greets the eye from almost any one of the many hundreds of small country branches scattered throughout the land, where the two or three clerks usually have time to now and then glance through the window, in the hope of seeing something of interest to enliven the monotony of every-day existence.

But there are bank windows through which we may peep, other than those of the small agricultural town, or the grinding city, and if my fellow bank clerks will follow me, I will endeavour to carry them to a bank window far away—many leagues from the staid and sober East, or the hustling, throbbing West, over mountains, lakes and rivers, through giant canyons, and dangerous passes, far away to the land of the midnight-sun of summer, or the spectral gloom of winter, when the frost king rules supreme, and the pitiless snow-waste yields a bountiful harvest of sacrificed humanity—sacrificed to the human greed for gold, the shining allurement that has beckoned many a stout heart to utter destruction. Away from the petty scenes and incidents of the outside world, to that great beyond, where the surging Yukon lashes its rocky banks, and its turbid torrents rush through their vast course to the Arctic regions.

If you are of the right material, and have weathered your way by my side for these few thousand miles, you will see before you a very conventional bank window, with capital and reserve

duly inscribed, through which you may gaze at the snow swept waste of the Yukon vale.

And now if we rub the frost from the pane, we see approaching, a small group of Indians, native sons of this northern clime. They have come to Dawson from the Peel river, a distance of some 200 miles, bringing a supply of mountain sheep and caribou meat, to be traded for "white man's" luxuries, such as tea, sugar, flour, etc. They are very picturesque with their brilliantly coloured costumes, native toboggans, and long dog-teams, each dog decorated with flowing ribbons and tassels of bright colour. It is indeed a stirring sight to see the northern Indians on the trail in winter.

Imagine a wild, bare, country—rolling hills covered with snow as far as the eye can reach, with the mighty Yukon, one of the largest rivers in North America, stretching away to right and left, now harnessed and still for the winter, filled from bank to bank with a vast mass of ice—huge blocks which have drifted down stream for perhaps some hundreds of miles, until, finally becoming too crowded to travel farther, have jambed with terrific force, causing many of them to rise on edge, in which position they have frozen solid. A splendid spectacle this, but weary travelling for the "musher" of the north, and much hard labour is required to pick out a trail over the hummocky ice.

On a clear, bright day, the scene is one of great beauty, with the sun reflected from a million icicles; but when the mercury drops in the glass to 50 or 60 degrees below zero, and the sun appears to have been blotted out of the heavens by the heavy mist caused by the cold; when it is fatal to be caught out too long unprepared; when few persons are seen outside, and those are muffled up in furs so that they can scarcely be recognized, the scene is different, but yet not without a certain romantic beauty to the imaginative onlooker.

And now if you rub the glass once more, and strain your eyes away down the river—you cannot see very far in the uncertain mist—you will perhaps observe what appears to be a small, black, writhing snake, winding its way up the river among the hillocks of ice. As you watch, the object grows and grows, until it resolves itself into a living mass of men and dogs. And as

they approach, the harsh and peculiar language of the "mushers" is heard. On they come, neither at a run, nor at a walk, but at a medium "jog-trot" sort of gait. The dogs bark, the men shout, the long snake whips crack and flash, and the dog-teams are upon us.

What a wonderful appearance they present! The sturdy, powerful, dark-faced Indians, dressed with a savage picturesqueness in native furs, beadwork upon caribou hide, dyed porcupine quills for trimming, and decorations of many colours. How they work, and shout and coax the dogs as they go by at their ambling pace. And the dogs, what intelligent creatures they are, how they strain and tug at the heavy loads behind them. There are usually from four to nine dogs in a team according to the size of the load. It is truly a brilliant, if perhaps gaudy sight; but then, an Indian cares little for harmony of colour. Each dog has his own harness, consisting of collar, traces and saddle, while to the latter is fixed a small upright post, at the top of which is a ball of brightly-coloured wool, with long streamers of multi-coloured ribbon which fly out in the breeze.

The toboggan is formed of two long planks, fastened together side by side, one end being turned up in a graceful curve, and fastened by well-seasoned sinew. Upon the toboggan is securely packed many pounds of moose, caribou or mountain sheep, frozen of course, and covered over with rough canvas. On the top of the load we see the heads of the animals killed, the large antlers or horns, securely lashed with thong made from animal hide.

On comes the first team, the driver running at the side, cracking his long whip and shouting directions to the leader of the team, who understands exactly what is said to him. "Gee!" shouts the driver, and the intelligent dog turns to the right; "Har!" again yells the man, and the dogs swerve to the left. "Mush!" and the team swings into line again and goes straight ahead.

And as with the first, so with the second, third and fourth teams, until they have all passed by, perhaps as many as a dozen teams in one long string.

Sometimes the squaws come to town, and they run with the men, while the fat, dirty, grease-soaked little papoose is strapped

in the end of the toboggan, with nothing showing but a small round face with large wondering eyes, the whole apparently growing out of a load of caribou meat.

As the last team passes from view, the plate glass in front of us becomes clouded over by our hot breath, and we reluctantly turn away, to continue our work of posting ledgers or cashing cheques as the case may be.

F. W. HEATHCOTE.

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"LLOYD'S."

(Read before the Political Economy Club.)

SOME months ago when I was asked to read a paper before this club, I had some difficulty in thinking of a subject which would be of interest to our members. I think it was a happy inspiration that induced me to select, as my subject, "Lloyd's, Its Business and Its Romance," for, since then, "Lloyd's" has become very prominent in the public eye.

I feel sure that the publicity which has lately been given to "Lloyd's" will have created an interest in this wonderful corporation among the members of our club.

In my younger days I had opportunity of coming in contact with this well known organization, as it was then my duty, on behalf of the Chartered Mercantile Bank of India, London and China, to look after its maritime interests in connection with the arrival of ships from the East, carrying cargoes of silks, teas, etc.; and I have since had such a keen interest in its operations that I have been in the habit of reading any literature that has been published on the subject, and I have had no hesitation in making free use of this, in the hope of giving you this evening as interesting a paper as possible.

Also I am particularly indebted to a member of "Lloyd's" to whom I wrote for information, and who responded to my appeal in the very kindest manner. "Lloyd's" is an immense organization for the collection and distribution of marine intelligence which is published daily in "Lloyd's" List. This intelligence is of supreme importance to the merchant, the insurer and the shipowner. The underwriter must know the movement of ships, he must, too, know about casualties. Every casualty that occurs is telegraphed to "Lloyd's." For this purpose "Lloyd's" have agents on every coast. There are over 2000 "Lloyd's" agents. They are stationed in every part of the globe, and are selected by a special committee. Although the fees are small the post is eagerly sought after on account of the social prestige attaching to the position in the mercantile world,

and any claims which may arise are adjusted and paid through " Lloyd's " agents, practically all over the globe.

Every disaster that takes place, even in the most out of the way places, is transmitted as rapidly as it can be flashed to the central office at " Lloyd's, " and it is thence distributed amongst all those interested. As may be imagined curious reports are sometimes received at " Lloyd's," and it is a matter of history that some years ago, a telegram was received to the effect that the " Twelve Apostles " had been wrecked at " Hell's Mouth."

It is estimated that not one vessel in ten reaches a port in the United Kingdom without her approach having been previously announced from a Lloyd's signal station, and, it is stated, that some 60,000 vessels were reported last year alone.

A stream of telegrams—amounting to 90,000 per annum—and correspondence amounting to over 100,000 letters per annum pour into Lloyd's Intelligence Department day and night, for it is open during the twenty-four hours, and day and night staffs of clerks receive the messages, copy them, translate them, enter them into books, post them up, send out copies to subscribing agencies and firms, and re-wire them to other maritime centres.

Everyone knows that A1 at " Lloyd's " is synonymous with " First Class," and as such it has passed into a common-place of the language. No commercial men require a definition of " Lloyd's," but it is remarkable how few people outside of them have any intelligent idea of the organization and functions of this wonderful corporation, although they probably have a sort of idea that " Lloyd's " has something to do with ships and shipping.

At the present time " Lloyd's " may be said to be divided into two great branches. There is " Lloyd's," the " Lloyd's " of the Royal Exchange, the centre of the marine insurance world, and there is also " Lloyd's " Register of British and Foreign Shipping, an off-shoot from the parent society which is also of great benefit to the commercial world. Both of these societies spring from one common origin. The following historical account is taken from a lecture delivered by Colonel Hozier, formerly secretary of " Lloyd's."

Towards the latter part of Queen Elizabeth's reign the commercial community in those days interested in shipping fore-

gathered at a small coffee house in Tower Street, kept by a man of the name of Edward Lloyd. This coffee house keeper has had his name handed down from generation to generation in connection with the greatest shipping and marine insurance transactions of the world. Edward Lloyd was a man of intelligence —his coffee house was frequented by seafaring men who jostled against merchant and marine insurers. He was the first founder of that great system of maritime and commercial intelligence which has now been developed by "Lloyd's." In 1696 he brought out a newspaper printed three times a week called "Lloyd's News," which was the first step in the creation of the great corporation that bears his name. This paper gave plenty of news, and, especially, information on the subject of shipping.

Some years later, "Lloyd's" Coffee House became connected with various gambling and speculative transactions. We find that the lives of unfortunate gentlemen who had to pay the penalty of breaking their country's laws were insured at "Lloyd's" as a sort of speculation; also, whenever any great statesman fell ill his life was insured.

The chance of war with France at that time was insured against at 10 per cent., and the chance of the dissolution of Parliament was covered at fifteen guineas. Travellers who went abroad were able to insure their safe return, but it seems that the premium was tolerably high. A traveller of the name of Henry who went to Constantinople insured his return for twelve hundred pounds, but he had to pay £400 premium for it. It was only natural that there should be speculative insurances at "Lloyd's" at that time, owing to the enormous wave of speculation which swept over the country.

One can insure almost anything at "Lloyd's." It is recorded that "Lloyd's" have been asked to insure a man of 63 against ailments, another who was afraid to walk about at nights wanted to insure against the risk of being robbed by hooligans. Ladies also have appealed to the corporation to insure them against benefits in the way of a family, who seem to consider that twins are an affliction rather than a blessing, and it was only the other day that we saw in the newspapers that owing to the great burden of new taxation to be imposed under the Asquith Government to cover the deficit of one hundred millions in the Budget, an extraordinary form of insurance was taken out at "Lloyd's."

Merchants were taking out policies providing for the payment of capital sums in the event of the Budget containing a heavier taxation on tea and sugar than is laid on other commodities. The premiums charged were very heavy.

During the seven years' war, 1757 to 1763, marine insurance first became a condition of natural commercial importance, i.e., against war risks, and many humiliating disasters at sea occurred at that time, and the insurance premiums that were paid were very heavy.

There are three subjects to be insured at sea—there is the ship, the cargo and the freight—all these may be insured and they may belong to different owners; and in time of war there is what is termed the maritime risk—the risk of danger from accident, the risk of danger from collision, the risk of danger from stranding. These are an entirely separate consideration, quite distinct from the risk of danger of capture and seizure by an enemy.

After the coffee house, which still bore "Lloyd's" name, had been in existence a good many years, some of the elder and more staid members of the company which frequented the coffee house seemed to take exception to the gambling and speculative transactions that went on there. They, therefore, formed themselves into an alliance, and in a body moved from the coffee house in Tower Street in 1770; and in 1774 moved again, taking with them Lloyd's List—which is the foundation of our commercial maritime intelligence. They took up their abode in the Royal Exchange, in the very rooms which "Lloyd's" at present occupies. These are the rooms which our late lamented Queen Victoria came to, when she opened the Royal Exchange in 1844.

Previous to 1774 when they moved to the Royal Exchange "Lloyd's" were making enormous profits, and it was then that some of the members objected to the speculative business. About that time there was an occurrence which was said to be the means of striking a blow to the slave trade.

It occurred in this way. There were large cargoes of slaves continually shipped from West Africa to what were then our colonies in North America, and also to our colonies in the West Indies. These slaves were insured much in the same manner as any commodity at the present time might be insured. It was, however, in the case of the insurance of the slaves, stipulated

that there should be no claim on the underwriters from mortality other than such as might arise from peril of the sea. The captain of a slaver coming across from West Africa to America found that disease had broken out amongst his cargo of slaves, and in order that the loss might fall upon the owner, and with a benevolent desire to benefit the underwriter, he threw all these unfortunate creatures overboard, so that they might be destroyed by the sea and not by mortality. Somehow or other the underwriters at "Lloyd's" discovered this, and when the claim was presented for payment they refused to settle. The case went before the High Court and attracted much public attention. The indignation that arose among the British people on account of this transaction was so great that it led to the agitation which resulted in the abolition of the slave trade, and the emancipation of the negro.

From the time that "Lloyd's" moved in 1774 to the Royal Exchange there was not much change in its constitution. There was, however, jealousy abroad on account of the fortunes made by some of the underwriters in the war, and an effort was made to break down the monopoly, but the House of Commons decided that "Lloyd's" had done a great duty to the country, that through the whole years of the war with France, "Lloyd's" had supplied the Government with information in regard to maritime matters which sometimes the Government had failed to receive itself; that the system of commercial intelligence at "Lloyd's" had been established by the labour of half a century, and had been brought to a degree of perfection which rendered it of the utmost importance to the mercantile world.

Therefore, the House resolved that no alteration should be made, and "Lloyd's" continued in the same position as it was before—only, however, for a short time, for ten years later, in 1820, an act was passed by which marine insurance in England was thrown open to the public.

Anybody could start as a marine insurer who liked. Really, however, this act had no practical effect, because it was not until the passing of the Joint Stock Companies' Registration Act in 1844, that many marine insurance companies were started. Then marine insurance companies were gradually formed. There are now, I believe, even in the City of London, some fifteen or sixteen companies, and instead of their being, as was expected,

a great thorn in the side of "Lloyd's," they are all working harmoniously together, and are stalwart supporters of "Lloyd's" for its system of intelligence and its distribution of commercial intelligence throughout the world.

In 1871 "Lloyd's" was incorporated by Act of Parliament.

The Act of Incorporation of "Lloyd's" defined the objects of the Society to be:

1. The carrying on of the business of marine insurance by members of the society.

2. The protection of the interests of members of the Society in respect of shipping, cargoes and freights.

3. The collection, publication and diffusion of intelligence and information with respect to shipping.

"Lloyd's" is, as has been stated, a corporate body, but does not, as a corporation, undertake insurance business. Its members act as underwriters and brokers solely on their own individual account, but in so doing by reason of their membership have to conform to certain rules and usages. To the outsider it means that in dealing with a member of "Lloyd's" you are dealing with a man of proved standing, integrity and financial soundness.

A few words dealing entirely with the practical business side may be of interest. Every candidate for election as a member has to reassure the committee on these points, and furthermore to guarantee himself; £5,000 being the smallest sum he has to deposit with them in the name of trustees as additional security for possible liabilities on account of marine and transport risks. The total of the assets so deposited is said to be nearly £5,500,000.

In the case of any one who is not connected with insurance, a considerably larger deposit is required, and, in any event, close enquiry is made as to the financial standing of any new candidate. There is also an entrance fee, and an annual subscription, which goes towards the up-keep of the room, the use of the library, etc.

Before election, an underwriting member selects some person to underwrite risks for him. The usual practice is for one underwriter to write for a group of names, each name bearing his proportion of the risk. Thus, supposing that Mr. A. writes for a group of ten names, and takes a line of £1,000 on a par-

ticular risk, each of his names will be severally liable for one-tenth of the amount, viz., £100.

The usual arrangement when making an agreement with an underwriter is to pay him a minimum salary of so much, he keeping a percentage of the profits himself. He usually stipulates for from 10 per cent. to 20 per cent., but some underwriters who write a very good account, are so much sought after that they are able to stipulate for as much as 30 per cent. to 40 per cent. Really first-class underwriters in insurance, as in everything else, are few and far between, and naturally very much sought after.

An underwriter can only accept business from a broker who is a member or subscriber of "Lloyd's." The usual practice is that when an order comes to hand, the broker takes a slip, a narrow piece of paper about seven inches long by about four inches wide, and writes on it the terms of the risk. For the sake of convenience these are written in an abbreviated form, which would be quite unintelligible to the casual stranger. The slip is then shown to the underwriter, and if the latter is satisfied with the risk and the rate, he writes on the slip the amount that he is prepared to take, and adds his initials to the same. This is then entered by his clerk in the "risk book," and the broker passes on to the next underwriter, and so on, until he has completed the whole amount he has to do. Great importance is attached to the slip, which the underwriter looks upon as the real contract between himself and the assured.

Having once signed the slip, unless it should happen that the underwriter has been given incorrect information from a broker, he is held to his contract and must sign a policy when it is put forward.

When the slip has been completed, the broker makes out an advice note, which he sends to the assured, and the policy is then prepared and handed with the slip to the underwriter's clerk to sign, which is done by an india rubber stamp of the group of names with their respective amounts against each.

If the broker has an important risk to place, the first person he naturally goes to is the leading underwriter for that particular class of risk, as it is important that a good start should be made, and having once done this it is usually easy to get others to follow.

The principal underwriters at " Lloyd's " have a special staff for the settlement of claims. As these come to hand, the broker passes all the correspondence either to the underwriter or his claim settler, and obtains his instructions, but if he is prepared to settle the claim straight off, the policy is endorsed with the amount of the claim, and the percentage of the same, and is initialled with the underwriter's initials. It is the custom to be liberal in the matter of settlement, and it is to this that " Lloyd's " owes a great deal of the large volume of business that goes to it.

On the other hand, this is the time when the assured will find the advantage of employing a first-class firm of brokers. As the custom with such firms is to make themselves responsible for the assured with the underwriters, they are naturally careful as to whom they go, and, consequently, are usually able to get claims settled promptly and quickly, and frequently to induce underwriters to meet the assured where it is doubtful whether there is any legal claim under the policy or not.

Cheap insurance, like many other cheap things, is often a very inferior article, although it is difficult to get the public to appreciate this.

Within recent years a great change has come over the business done at " Lloyd's." Until a little more than 15 years ago, the only serious business was marine insurance pure and simple, but now-a-days there are an immense amount of miscellaneous insurances placed of every sort and description, such as fire, burglary, theft, third party liability, motor cars, employers' liability, etc., done in the room.

To a large extent this was due, I understand, to the enterprise of a single underwriter who had the foresight to see the large field there was for this class of business and whose efforts were most successful. In actual practice an underwriter for a Company requires better information in all features of any risk he proposes to write than does a " Lloyd's " underwriter.

Owing to the very small expense ratio, however, " Lloyd's " underwriters are able to make more money out of these risks than any company can. An underwriter's chief expenses are his annual subscription for seats for himself and his clerks towards the general expenses of the room and the Intelligence Department of " Lloyd's," and his clerks' salaries.

This non-marine business has assumed such large proportions that some few years ago the committee decided to require guarantee policies in respect of them, as the ordinary deposit was not available to meet losses. The practice with the most important groups of names now is to make special deposits for these risks, and to give a guarantee policy varying in accordance with the amount of premiums written in the previous year.

Lately, however, as you may have seen in the English newspapers, there have been rumours that some of the underwriters at "Lloyd's" have been faring very badly, and that some anxiety has been caused as to whether all of them would be able to meet their liabilities. "The Times" said: "It has in the past been "the proud boast of 'Lloyd's' that its underwriting members "have never proved unable punctually to meet all their engage- "ments arising out of marine underwriting," and goes on to say that speculative business may have caused trouble. Some of the critics have said that the principle upon which the underwriters work, and which at present prevails, is a bad one, and entirely unsuited to modern times, and that the security for the insured is limited to the ability of individual writers to meet the specified amounts for which they are responsible.

The contention is that however responsible and however strong any group of underwriters may be, they cannot in the very nature of things compare for financial strength with a well established insurance company who publish their accounts regularly, while in the case of the underwriters, neither the committee of "Lloyd's" nor the public know anything whatever about the liabilities or the means of meeting them. It was also suggested that the underwriters should have their accounts audited and submitted to the committee of "Lloyd's," or some other responsible authority.

Well, in response to these criticisms we saw in the papers about ten days ago that the members of the Association had submitted their methods and accounts to an investigation by chartered accountants.

The result showed that 98 per cent. of the membership were declared to have passed the test, and to be good for the financial liabilities undertaken.

Of the remaining 2 per cent. whose names did not appear on the certified list, it was said that most of them expected to

qualify for certificates during the following week. The audit established that over £5,500,000 had been deposited with the committee by the members, as security for contingent liabilities.

The Chairman of the Committee, Sir John Luscombe, admitted that some of the members of " Lloyd's" had speculated and had become seriously involved financially, but that he believed that nearly all of these had been found to be solvent at the audit of their accounts.

Now, I will pass on to a short description of their place of business in London, which I have drawn largely from an article by St. John Hart.

When you go round to the east side of the Royal Exchange, you see on your right a lofty, open doorway, above which is the simple word " Lloyd's." You push open the swing doors and proceed up a great stone staircase, up and down which a stream of men are constantly hurrying.

On the first floor is " The Room "—that is, the underwriting room, but unless you are a member or subscriber, or the accredited representative of one or the other, or have business with the staff, you cannot alone enter the room any more than you could pass into the most exclusive club.

At the top of the stairs is a barrier presided over by a gorgeous official in a scarlet robe, and a gold-banded top-hat. Here the stranger gives in the name of the member he wishes to see, and this is passed along to the " Caller " within.

The name is called aloud, and the bearer of it then comes to the barrier, and either takes you within, or, as in most cases, transacts his business with you then and there.

On the left as you enter is the desk of the Superintendent of the Room, and a little beyond it is a reading desk, on which rests open one of the most fateful volumes in existence.

It is a great tome bound in green leather, known as " The Loss Book," in which each day, as the news is received, is written in fair round hand the list of the casualties at sea. For the year these total on an average something over a thousand.

As a pendent to it, on the opposite side of the chamber, are two volumes of like size to the Loss Book, in one of which are recorded all the home arrivals, and in the other, all the arrivals in foreign ports.

Sharp to your right as you enter is the Seat of the "Caller" —he who calls out the names of the men or firms for whom enquiry is made at the barrier, or, in the Room—another gorgeous scarlet-robed official, framed in a pulpit-like piece of furniture, topped by a great sounding-board.

The northern end of the room, immediately at the back of the Caller's Stand, is partitioned off, making a separate apartment, known as the "Chamber of Horrors," and also "The Graveyard." Here are posted copies of the telegrams received reporting casualties, arrivals, and sailings. Unimportant casualties are not entered in the Loss Book, but the reports of them, on yellow flimsy, are posted here. Home coastal reports are written on brown-tinted paper, foreign arrivals and sailings on yellow tissue and the ominous announcements of vessels missing or overdue, on white.

High on the top of the partition screen—a picturesque feature from any part of the room—is mounted the bell, surrounded by the rudder-chains of the once tall frigate "Lutine," which, after lying for sixty years at the bottom of the North Sea, is now placed in the very heart of maritime Britain, both as a relic and to serve a quaint purpose. When a vessel is unheard of for so long as to be despaired of by her owners, an application is made to the committee to have the ship posted. If the application is entertained, a printed notice is affixed to the board in the Telegram Room, or "Chamber of Horrors," or "Graveyard" to the effect that the committee would be glad of information concerning the vessel. This is done on a Wednesday. If by the following Wednesday no news has come to hand, the first notice is replaced by another saying that the —— which left —— on such and such a day for ——, has not since been heard of. This is the process of a ship being posted as missing at "Lloyd's" and that day the loss is payable by the underwriters, and the crew are dead in law, to the extent that probate of their wills can be obtained.

When a ship in which any amount of general interest is felt, is so posted, the Caller rings one short stroke on the "Lutine" bell. In the very unusual event of the vessel afterwards arriving in port, the Caller rings two strokes and makes the announcement from his rostrum. So after a century ago having called the watches and told the hours to the gallant

crews of two opposing nations—for "La Lutine" was one of our captures from the French—and then rung only to the ebb and flow of the tides, the ancient bell, linked by strange coincidence to its early associations, nows tolls only the losses and survivals of the sea.

The scene when some thousand men are congregated in and moving about the Underwriting Room at the busiest time, which is between 3 and 4 p.m., is one of great animation.

Underwriting at the first glance appears to be a very simple matter. An owner wishes, we will say, to effect an insurance of £30,000 on a vessel for a certain voyage. It may be a regular risk—that is, from a home port to a foreign, and thence back—such as constitute generally the voyages of regular traders, or a cross risk, which means from one foreign country to another, or from one port to another port in a foreign country.

The matter being placed in the hands of a broker, he goes to an underwriter, who takes a proportion of this risk—say £2,000 or £3,000; then to a second, who takes up so much more; and so on till the amount required is subscribed, or if one takes the lot, he at once re-insures among his fellow-underwriters, as already explained. No single underwriter, save in exceptional cases, would take the whole amount and keep it, as in case of loss, he would be hit out of all proportion to the chance of profit made.

The underwriter must possess a considerable knowledge of geography; he must have at his fingers' ends the safety or danger of every port and roadstead in the world, the best and worst seasons for all voyages, and the character of the navigation to and from all lands. In addition he must know all that the broker knows, which is, how to fill up policies of every description, with all the innumerable clauses adapted to every imaginable contingency; how to make accurate calculations of interest so as to cover loss, and correctly assess premiums; and how to make up the complete statements of average and partial loss on every description of goods. He must know the current rates of premium on every voyage, and must be informed as to the character and standing of the different underwriters for the right selection of the names he takes upon his policies.

Underwriter and broker require no little assistance in the practice of their exacting callings, and at "Lloyd's" this is sup-

plied, in the first instance, by a small but excellently selected and up-to-date marine reference library off the small Underwriting Room; in the second, by the Reading Room, a fine, large apartment opening out of the main room, at the end of which is the Telegraph Office, so that messages can be sent direct to and received from all parts of the world without leaving the building; and in the third, and principally, by "Lloyd's" Intelligence Department.

The Library contains a fine collection of charts, maps, gazetteers, sailing directions and works on navigation. The Reading Room, besides newspapers and bound volumes of "Lloyd's List" and "Lloyd's Register of Shipping" contains a large number of volumes in manuscript, the entries having reference to "Lloyd's List," and known as "Lloyd's Index," this record of information giving constant employment to a staff of clerks. Every year a new set of volumes replaces the old, which are stored so that they can be referred to at any time.

Another huge set of tomes is the Captains' "Register," which has been aptly defined as a biographical dictionary of the whole of the certificated commanders of the British Mercantile Marine. The number is something like 60,000. The information for compiling the Register and for keeping it absolutely corrected up to the latest date is furnished exclusively to "Lloyd's" from the records of the Office of the Registrar-General of Shipping and Seamen, and is supplied under the authority of the Board of Trade.

Every week there is a vast budget of changes from death, removal, retirement and so forth, and each entry supplies every detail that can be of the slightest use to shipowner or underwriter. All day it is being consulted, for it stands to reason that a man is not going to insure property without knowing all there is to be known concerning the character and career of the man who is in sole control of the property.

One department of the "Register" deals not only with the registration, but with the classification of ships and the testing and inspection of engines, boilers, anchors, cables, etc., and for that purpose employs a large staff of surveyors, who, needless to say, are experts of high standing. The class to which a vessel is relegated determines her insurable value, so the inter-dependence of "Lloyd's" and "Lloyd's Register" can be readily under-

stood. Everything becomes old in time, and one can imagine with what anxiety many an old sailor, after having invested a great part of his fortune, perhaps in the fitting or trying to reclass his old ship, awaits the classification of the " Lloyd's " verdict, whether a new lease of life is to be given, or whether a limitation such as A 2 or A-red instead of a clear A 1, and which would mean a lower rate in the freighting market by reason of a higher rate in the insurance market, on account of the declassing.

It used to be said in the Pacific that there was no better speculation than a cheap schooner, a sound reef and a reliable captain.

One of the reasons for the existence of " Lloyd's" is to prevent these speculations being profitable—or in other words, to prevent and expose marine insurance frauds. " Lloyd's" possesses an amazing record of these— both attempted and successful—perhaps the most remarkable example of which was that connected with a vessel that never existed.

The vessel was first reported in the papers as having sailed from one port to another. Subsequent voyages were chronicled in due course, and her movements were as frequently announced as those of any existing vessel fully employed in ordinary legitimate trade. When people who are in the habit of reading shipping reports had got thoroughly accustomed to seeing her name in the papers, the vessel and cargo were insured on a voyage from Cronstadt to Great Britain. As she never existed, it follows that she never arrived—in due course she was posted as missing, and the underwriters paid a loss on both ship and cargo. The fraud was only discovered after such a lapse of time that prosecution was out of the question, but needless to add, this was some time before " Lloyd's " Intelligence Department had reached its present stage of perfection.

Letting alone the fact that in protecting the interests of underwriters in prosecuting their holy war against unseaworthy ships, incompetent, reckless and dishonest captains, and unscrupulous and criminal owners and shippers, they have indirectly saved the lives of thousands of humble toilers of the sea, the members of " Lloyd's" have made and can justify the proud boast that in promoting their own interests they have always promoted those of their country.

Before closing this paper, I should like to explain, in a few words, one or two of the terms used continually in the marine insurance world.

In Marine Insurance, the term *Average* signifies a damage, a loss or an expense, *Particular Average* being a damage, a loss or expense pertaining to some particular interest—as to the ship, to the cargo, or to the freight, while *General Average* means anything done for the benefit of ship, cargo or freight. The whole principle of general average is that of the proportionate payment by the parties interested in the ship, freight and cargo, of either sacrifice or expenditure incurred at a time of peril, for the general benefit.

An instance of General Average is "Jonah." While this gentleman went on a sea voyage, his presence on board was supposed not to tend to the general good, and, consequently, Jonah was thrown overboard in order that the safety of the ship and her crew might be secured. The jettison of Jonah would undoubtedly, on the authority of Colonel Hozier, be held by the Court of Admiralty to be a case of General Average. *Particular Average* represents damage or loss either to a sailing vessel or steamer or to her cargo and freight, which is purely accidental in its nature.

If say, among a general cargo of all sorts, some 20 chests of tea were damaged by sea water, the tea alone would be affected, and the owners of the tea or the underwriters with whom the owners had insured it, would be the only persons to suffer; the other interests of the ship, cargo and freight would not be affected.

Bottomry Bond. If a ship gets into trouble, and it is necessary to raise money in order to get her out of trouble, the master of a ship is entitled to mortgage his ship to a certain amount—and this is called Bottomry. The Bottomry Bond is the Bond of Mortgage on the vessel. Whoever lends money under these circumstances, stands a great risk, because if the ship gets out of trouble through Bottomry, and proceeds on her voyage, and finally gets lost, the man who lent the money on the Bottomry Bond, loses his money, because the security for it has gone. In order to avoid this he insures and covers himself against loss.

Respondentia Bond is a Mortgage of Cargo, and is practically the same thing as Bottomry, except that it refers to the cargo instead of the ship.

It would take far too long to endeavour to sketch, even in a perfunctory manner, the functions which " Lloyd's" has to perform, but it is marvellous to think that the Underwriters and Brokers and the staff generally have gradually evolved from very small beginnings—a mere meeting place of merchants—that great organization now still known by the name of " Lloyd's," which knows no jealousy and fears no rival.

As St. John Hart said when writing on the subject, " ' Lloyd's ' is the protector—the tutelary deity of all our count- " less ships, watching, reproving, punishing, safeguarding—hail- " ing their advent, speeding their departure, and, with one stroke " on the ' Lutine's' Bell, tolling their lonely obsequies.

" And so when, after leagues of ocean, you see the familiar " E.C. signal—(What ship is that?) fluttering from the signal " station staff, your heart goes out to all that the sender of the " question symbolizes."

J. Gillespie Muir.

Dear Sir,—

THE STUDY OF BANKING AS A PROFESSION.

I WAS much interested in the last number of the JOURNAL and specially with the short article entitled "Prepared places for prepared people."

It struck me very forcibly as I read this article that we Canadian bank officers, as a class, are not as ably prepared for our profession as we might and should be. The younger members of the different staffs seem to think of nothing else except getting through the work and getting out early. This may be all right for "All work and no play makes Jack a dull boy," but time spent in a more careful treatment of the work each day would indicate a real interest in the chosen profession.

It would be a great help if some interest could be created in the study of banking. Perhaps competitions opened by this JOURNAL would arouse the required interest. Suitable prizes might be given, say in the form of books on banking, foreign exchange, or some other helpful subject for the best essays on different subjects relating to banking. The cry, I suppose, would be that it takes money to purchase prizes, but it is doubtful if any of the banks would refuse a few dollars a year when it would mean so much to the future benefit of the banks in general.

A very helpful plan was followed by a branch manager of my acquaintance. He had had some experience in banking and had also done considerable reading along lines following same. He was much interested in the future welfare of the bank and of the young men under him, so he proposed to his staff that they set aside one evening a week, on which evening they would meet at the office and study their profession. His plan was somewhat as follows: A book was kept in which was entered the names of the staff at each meeting, the subjects discussed and the marks taken by each member at the oral examinations. The bank's rules and regulations was the first book studied and it was carefully gone over from start to finish, the different rules explained and examples given of their working. Having fin-

ished this course of study an oral examination was held in which the entire staff were marked from the junior to the accountant, according to his position. This created much interest and competition as a senior officer did not care to be outclassed by a junior. The rules and regulations being finished a discussion was started on the different posts in an office with the work allotted to each and some of the technicalities that might come up and which would cause much inconvenience. After fully discussing these points the staff were in a fair position to start on the Bank Act and the other allied acts which are necessary to be known. These were carefully studied, carefully explained, examples given of their working and finally a great interest was aroused in the subject; so much so that the majority of the staff studied the work in hand and at the same time kept reviewing the subjects gone over. Reviews were taken at unexpected intervals and questions asked which all desired to be able to answer.

This manager, I suppose, has many brothers-in-arms who are treading in the same footsteps, and I am sure that if some enthusiasm could be created in the general staff to study their profession, that they would all lend a helping hand, and as a result we would have better men ready to take the positions at the top and which are waiting to be filled with prepared men, who know what they are about and are fully conversant with their profession in all its many lights.

Let us keep up the bright name and record we have at present. We must not lag behind, but we must always keep our shoulder to the wheel and try to encourage a live interest in our chosen calling so that our world-wide reputation as bankers may always be maked "A.1."

Yours truly,

C. E. HUSTON.

Dear Sir:—

Your courtesy has permitted me to see in advance Mr. Falconbridge's comments upon my article upon "The Negotiability of Deposit Receipts" in the JOURNAL for October. Without going into the matter at length, which space and time do not permit, may I make a few remarks in reply?

The introduction to my article may have been somewhat clumsy, but it simply amounted to this. I pointed out that the writers in "Canadian Banking Practice" regarded deposit receipts "in the ordinary form" to be non-negotiable. This ordinary form I took to be the typical deposit receipt, regarding the other forms as mere variations from it. The purpose of my article was to point out that in so far as any form was a variation from the typical form it was ineffectual; and that a deposit receipt was nothing but a deposit receipt unless it was expressly and intentionally something else.

Turning to Mr. Falconbridge's book I gathered that he leaned to the view that unless negotiability was negatived in the receipt, the document was negotiable, a view which I held to be contrary to the opinion of the writers in Canadian Banking Practice whose conclusions were based rather on the interpretation of the phrase "account for" than upon the point as to whether the receipt should be made accountable to the depositor or to the depositor "or order."

As for Chancellor Boyd's references to the earlier Ontario cases, it is in effect to say that the deposit receipt in so far as it approaches the ordinary form is non-negotiable. I still maintain my criticism of the Chancellor's own judgment in the Central Bank case as based in part on an irrelevant text of law; and as overlooking, as a matter of law, the very element of intention which in another part of the judgment the Chancellor seems to find as a matter of fact.

This point of intention is for me the only one of importance. Even taking the deposit receipt in the form of a promissory note, I submit that the essential interpretation of the instrument should exclude an accidental interpretation of it. The essential interpretation of the deposit receipt is that it is a receipt for something stationary. An accidental resemblance to something quite the reverse ought not to influence the courts.

I am glad to see that Mr. Falconbridge agrees that if his argument is sound then the banks have for a long day been violating the law with regard to non-circulation.

Your obedient servant,

W. F. CHIPMAN.

QUESTIONS ON POINTS OF PRACTICAL INTEREST.

A, B, C, D, are directors of a limited liability company and personally sign a joint and several note with said company in favour of a bank for company's accommodation. At a subsequent annual meeting A is dropped from the directorate and E is elected in his place. When above mentioned note matures, the new note given in its payment has the names of B, C, D, E, instead of A, B, C, D. Three years later the Company fails and the bank compels B, C, D, E, to pay the note which has been renewed from time to time but on which nothing has been paid since the making of the original loan. Can B, C, D, E, recover any portion from A?

Answer.—A is not liable on the note.

In the January issue of the journal under the heading "Questions on points of practical interest" several questions were asked regarding endorsements and the right of one bank to ask another bank for a special guarantee of said endorsements.

At a meeting of the Executive Council of the Canadian Bankers' Association held on 20th February 1906, the following amendment to the rules respecting endorsements adopted by the Council of the Association in February, 1898, was unanimously approved. "In case of all items, whether restrictively endorsed "or otherwise, sent through exchanges by members of the "Clearing House, the member sending the item shall be deemed "and held as guaranteeing the authenticity of all endorsements "thereon, and if such guaranty do not expressly appear it shall "be implied."

Question.—(1) Of what use is this ruling by the Council of the Association if it is still necessary to guarantee upon request?

(2) Would not the bank that last endorsed the item be responsible in any case?

Answer 1-2.—The resolution of the Council of the Bankers Association puts the banks on their honour to take back any irregularly endorsed items, but it does not alter the law, and if a bank is not legally liable it might be hard to enforce re-payment from them were the amount large and the irregularity obvious to the paying bank at the time of payment.

You must remember that these rules were made to " Smooth the wheels," but that the paying bank is the one that must be satisfied, and they need not take any bank's guarantee, but can ask to have the endorsement made regular.

It is very reasonable that when they notice an irregularity that they consider of importance they should call the attention of the sending bank to it by asking for a special guarantee.

Question.—A, doing business as a merchant, gives B a full power of attorney drawn upon form used by bank (C). A bank other than Bank (C) sends to A one of its regular forms used for obtaining acceptance of drafts sent them for collection. Has B the power under power of attorney held by Bank (C) to sign another bank's power of attorney from authorizing an official of that bank to accept draft in A's name?

Answer.—Unless the general power of attorney gives B power to accept draft and power to appoint a substitute to do so the acceptance is not in order.

Question.—A man A.B., draws a cheque payable to the order of a firm, but decides to draw cash for the cheque himself. He places his own endorsement on the cheque and presents it for

payment at a bank where he is known. On their presenting the cheque at the office on which it is drawn payment is refused, the answer being "Not Endorsed." Is the drawer's own endorsation not sufficient or can they demand a guarantee?

Answer.—In this shape cheque requires payee's endorsement. A.B. should have changed payee or instructions to pay to order.

An American banker, crossing the border with one thousand Mexican dollars in his possession, was seized by the Mexican authorities and cast into jail because he had neglected to pay the import duty of 40 per cent. on the coin. Shades of the Crime of '73! Is silver now classified under the hardware schedule?

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EDITORIAL NOTES

"Speak not in high commendation of any man to his face, nor censure any man behind his back; but if thou knowest anything good of him, tell it unto others; if anything ill, tell it privately and prudently to himself."

Deserved Praise.

The writer of the article on The New Era of the Intercolonial, published in the June number of *The Busy Man's Magazine,* has evidently read Burkitt's above quoted bit of advice about the bestowing of praise or censure. In the article referred to the following tribute is paid to a government railway official who is probably quite unconscious that he deserves to be so favourably thought

of. But all who know Mr. David Pottinger, the veteran general manager of The Intercolonial Railway, will agree with the following sketch of his very useful career:—

"Mr. Pottinger has literally grown up with the system. He worked on a portion of it before it was developed into a trunk line and probably knows more about the road than any living man. He is the kind of man who is incapable of wittingly doing anyone an injustice and is respected and beloved by those who know him intimately. He is not a voluble man and from the paucity of his remarks at times, a listener might be deluded into the impression that he lacked interest in his work, or in that part of it at least about which the listener might be concerned. Those who know him well realize how far astray such an estimate is. Unobtrusive sympathy is a strong characteristic of his nature, and no one person can reckon the numerous quiet ways in which he has developed it. He knows every inch of the road and probably most of the people who work on it, and whatever reforms the board may carry out it is safe to say that Mr. Pottinger will see that they are tempered with justice to the deserving ones. Times without number the general manager has been put on the shelf by Dame Rumour, but though governments have come and gone Mr. Pottinger has stayed on and is still there."

It requires a man with Mr. Pottinger's long experience and familiarity with existing conditions and with the temperament of the people with whom he had to deal, to stand steady at his post in fair weather and foul. He has had to suffer a lot of abuse and vituperation at times at the hands of overzealous partisan writers in the press, really meant more for the system than for himself personally, but he has taken it all smilingly and never lost his temper.

The Budget and Mr. Lloyd-George.

Mr. Lloyd George has certainly succeeded in raising a storm of protest over his Budget, the chief feature of which is an apparent attack on the landed class. For the last thirty years the landowner has had hard times and now just as his prospects were brightening the Chancellor of the Exchequer must needs propose methods of taxation, that, if accepted, will once and for all cripple him. The constant increase in naval armaments and the necessary pro-

vision for old age pensions constitute charges the financing of which must puzzle the brain of any minister, no matter how expert on the subject he may be. What astonishes the outsider then, is, that the Prime Minister should choose for this extremely difficult position a man who has had practically no experience of finance and who has lived his life within the narrow confines of a lawyer's office in a provincial town. No business corporation would for a moment think of inviting a man of this stamp to manage their affairs, yet he is entrusted with the solution of problems that must profoundly affect the fortunes of every owner in the British Isles. The business of government in England has latterly become curiously hap-hazard, and apparently, in making Cabinet appointments, the qualifications of a candidate from the point of view of training and education receive scant consideration. Perhaps the day will come when the compilation of the budget will be entrusted to business men with business training, who will realize that it is a poor policy in the long run that penalizes any particular portion of the community. Of course there must always be some grumbling over the incidence of taxation, but hitherto there has been no such daring attempt to practically tax one especial class out of existence. That is in fact what it amounts to; get rid of the landowner somehow, force him to sell his estates and turn them into small holdings, thus realizing the socialists' dream. Before the formation of this Utopia, however, the House of Lords have to examine the bill and its proposals; it will be interesting to see whether they will not reject it "in toto."

The Increase in Naval Armaments.

With the price of a Dreadnought somewhere in the neighbourhood of ten million dollars, it is small wonder if thoughtful people are alarmed at the piling up of naval armaments by the European powers. Scarcely a day passes but it is stated in the papers that some country or another has decided to construct so and so many Dreadnoughts. Austria follows the lead of her German ally and lays down four; Russia, after the usual procrastination and bickering between the Duma and the Council of State, likewise lays down four, and it is announced that France intends to spend between

the present and 1920 the enormous sum of 85 million sterling on the construction of thirty-three warships. Meanwhile, England is forced to make superhuman efforts to keep abreast of her possible antagonists, and day by day finds it more difficult to raise the necessary funds. In fact, if this state of affairs has long to endure, it will be the literal truth that peace has become more expensive than war. We live in an age of what may be called Social Endeavour, that is, an age when more attention is being paid to the amelioration of the general conditions of life than ever before. Education, the foster mother of thought, is now general, efforts are being made to improve the lot of the poorer classes, the slum is being eradicated from the city, money is being literally poured out to assist the sick and suffering and to conquer by science scourges like tuberculosis. Arbitration is generously employed in the solution of difficulties between capital and labour, and has been tried with some success internationally. And yet the net result of this admitted advance in thought is what? An ever increasing expenditure on war material, ships, munitions and men. It is a curious commentary on our much-vaunted civilization, and evidences the profound distrust that nations really possess for each other. Ententes and agreements are transitory, and Governments are not unlike individuals; threaten their interests or touch their pockets and the best agreement in the world becomes about as valuable as the paper on which it is written. One thing is apparent, that the constant financial drain of these vast armaments cannot continue indefinitely, though the precise way that relief will be obtained, at present, it is impossible to predict.

Rosebery at the Imperial Press Conference.

Lord Rosebery's speech at the inaugural banquet of the Imperial Press Conference is remarkable for the two notes he struck, the one sentimental, the other practical. The essence of the sentimental may be summed up in his own twice repeated phrase, "Welcome Home." He meant literally welcome home to all those oversea travellers, many of whom were visiting England for the first time, but all of whom regarded the Union Jack as the symbol of unity of idea and purpose they felt inherent in themselves, and who re-

garded the Old Country in just the same way that a son regards his father's house.

Sentiment may be scoffed at, but as long as human nature remains what it is, there is no doubt it must carry a weight of its own. Supposed conflicts of interest may from time to time arise and cause momentary coolness between any of the units of a world empire and the Mother Country. Such visits promote a better understanding both of the policy of the Imperial Government and, what is just as important, the outlook of the people generally on questions concerning the welfare of the Colonies. The practical note merits rather more consideration. Lord Rosebery in his speech spoke as follows:—

"Thirty or forty years ago you were satisfied with the jejune announcement that some Prime Minister, whose name you had never heard of, in some place with which you were imperfectly acquainted, had recently resigned office and had been succeeded by somebody else. But I think you will now give us this credit as regards our English and Scottish Press, that you will find ample, well-informed articles on all subjects relating to Colonial affairs, which show both an interest and an enthusiasm which is extremely gratifying to the Imperialist."

Have we, however, advanced in like degree to-day, and is there not ample room for improvement? Granted that the daily press is not a philanthropic institution, yet it has a duty to perform, the education as well as the amusement of the people. At present there is a tendency to deal with local topics to the exclusion of the larger Imperial questions. Yet a proper comprehension of these questions is the surest safeguard of intelligent policy, and as that policy is dependent on the Government in power, then obviously the voter should be educated to grasp the essentials of any move that his party may make imperially.

Cheaper cable rates will undoubtedly assist to make this more feasible, and possibly the Imperial Press Conference may be able to place this consummation within the bounds of realisation. But a thorough understanding of the problems of the Empire must remain a closed book, so long as the press of the country is not at sufficient pains to enlighten its readers.

It would appear from the reports in the daily papers that the immigration this year has already passed high water mark

and that the numbers are not so high as in 1908. This is attributed to the Government regulation, which demands that every third class passenger, unless coming out to a definite position, shall on landing be possessed of at least twenty-five dollars. That this precaution is a wise one any unprejudiced critic will allow. Employment is not found instanter and meantime the penniless immigrant bids fair to become a charge on the town he happens to land in. It is to be hoped that the Government emigration agents in England are as far as possible discouraging the clerk class from coming to Canada; we can produce quite a sufficient number of such young men to meet our present demands, and enquiries go to show that the unemployed in our cities are largely recruited from that class.

Immigration and the Englishman.

Reports continue to appear from time to time in the British press, generally, be it said, the work of the disappointed, stating that his nationality is an actual drawback to the Englishman, instead of standing as some sort of recommendation. Doubtless cases do occur where a man has tried his best to find employment and failed; that the question of nationality is the cause of that failure is nonsense. Possibly some prejudice does exist against Englishmen as a class, but not against the individual, and the existence of this prejudice may be traced oftentimes to a certain insular dogmatism, which is peculiarly irritating to the educated Canadian.

Let the Englishman fall in line with Canadian customs and he may rest assured that he will find many friends ready to hold out a kindly hand to his assistance; his success will depend on his ability to make use of the opportunities thus offered.

It may not be generally known that the London mint is turning out now-a-days a special nickel coinage for use in West Africa and especially Northern Nigeria. The value of these coins is about a penny, and for convenience sake a hole is stamped in the middle, which allows of their being threaded on a string. This is a point of considerable importance in a country where pockets and often clothes are conspicuous by their absence. Prior to British occupation the regular tender for all transactions was

Strange Currency.

the cowrie shell, of which a hundred represent only a fraction of a penny, so the complications that ensued when any large payment had to be made can be imagined. The native mind, however, is intensely conservative, and it has been a task of no little administrative difficulty to introduce a coinage which shall be understood and readily accepted. The reason for the discontinuance of the penny is doubtless due to the fact that bronze had never been seen in those regions and immediately became of even more value than silver, as it was melted down and used for ornamental purposes by the ladies. Curiously enough the introduction of gold has proved quite impossible, the idea that a small piece of this metal could equal in value twenty pieces of silver was beyond native comprehension and its use could not be made obligatory. Doubtless all this will be altered with the conclusion of Sir Percy Girouard's railway campaign, which will open one of the most interesting and least known of countries to the enterprise of the world.

Bank Depositors' Guaranty Law.

The opinion of the Attorney-General of the United States as to the right of their National Banks to participate in the "Bank Depositors' Guaranty Law," is of some interest to Canadian bankers.

It seems that the city of Kansas passed an Act providing for the security of depositors in its incorporated banks, creating a Bank Depositors' Guaranty Fund, providing regulations therefor and penalties for the violation thereof. The Act contained general provisions for the creation of a so-called "Depositors' Guaranty Fund;" all contributions from the banks which become parties to the scheme provided for in the statute, and for the payment out of such fund of any balance due to depositors of an insolvent bank remaining after the assets and personal liability of the stockholders of the bank should be executed.

The banks entering into this scheme are or were to be known as "Guaranteed Banks."

As a condition of becoming a "Guaranteed Bank" the directors and stockholders were required to adopt resolutions

authorizing it, and the State Bank Commissioner has to make a rigid examination of the affairs of such bank. If he finds it to be solvent, "to be properly managed and conducting its business in strict accordance with the banking law," then, after it shall have made with the State Treasury a deposit provided in the Act, the Bank Commissioner has to issue a certificate stating in substance that the said bank has complied with the provisions of the Act, and that its depositors are guaranteed by the "Bank Depositors' Guaranty Fund" of the State of Kansas.

The Attorney-General of the United States is of the opinion that it is unnecessary to consider whether or not a deposit of money to be applied, in the event of insolvency, to the payment of one class of creditors only in preference to other creditors of a bank would be a violation of the United States law governing National Banks, as opposed to those created by a State belonging to the Union. He answers specifically the question submitted to him, namely:—"Have National Banks in any State the right to participate in the assessments and benefits of a "Bank Depositors' Guaranty Fund" upon the same terms and conditions as applied to banks created by a State?" He says that they have not such right and that only an Act of Congress can confer such powers upon National Banks.

We commend to the attention of our readers an article by Mr. Alan Lethbridge upon the "Awakening of Siberia."

A New Field of Enterprise.

If Canadian manufacturers are in search of fresh fields of trade and enterprise, it would be well for them to support the suggestion of Mr. Lethbridge that a commissioner be appointed to report on the possibility of developing Canadian trade with Siberia.

As a market for manufactured goods Siberia seems to be as promising as our Canadian North West, for the Russians have at last realized that Siberia, hitherto known only "as the home of the convict and the exile; land of ice and snow and extreme desolation," is a country of bountiful harvests, religious toleration and immune from revolutionary and labour troubles.

The constant clamour for an improved monetary system in the United States is not creditable to the most practical people on earth.

Confidence in Currency.

The currency problem is one that seems to bother the very best of their statesmen and political economists, and it remains a menace to the financial prosperity of the nation. Writers and talkers upon the subject are forever arguing for a flexible currency to meet the requirements of trade at all times of the year, and it now remains for the International Monetary Commission appointed months and months ago to deal with this question and evolve some plan of action to restore confidence in the monetary system of a truly great country.

J. T. P. K.

THE AWAKENING OF SIBERIA.

Canadian Opportunities.

One of the most interesting features of recent international politics has been the growing rapprochement between Great Britain and Russia, rendered necessary to both by the regrouping of the European powers, and to Russia by financial considerations. That this rapprochement will lead to anything more durable politically it is at present idle to speculate, but it is certain that as a direct result British capital will be attracted towards Russia for the development of the vast undeveloped resources she possesses in Siberia.

For years Siberia has lain in a semi-dormant condition, depicted by the descriptive writer as the home of the convict and the exile, a land of lasting snow and extreme desolation, devoid of any redeeming feature. In the search after fresh fields for remunerative enterprise it has been overlooked, while the Russian himself seeking a new home has hitherto turned his eyes westward and ignored its presence. The construction of the Trans-Siberian Railway did much to sweep away these fallacies, while if the Russo-Japanese war was productive of no other good it afforded an object lesson to the peasant soldier travelling to the front and turned his thoughts to the possibility of quitting his own over-crowded corner of European Russia and of making a home for himself in this new country, where might be found complete religious toleration as well as immunity from constantly recurring revolutionary and labour troubles.

In 1904 the British Government sufficiently roused itself from its habitual lethargy where commercial questions are concerned to send a special commissioner to report on Siberia as a field for British enterprise. Time prevented this commissioner from travelling beyond Irkutsk, near Lake Baikal, and he left unvisited the vast country beyond, stretching to the shores of the Pacific and known by the name of Trans-Baikalia. Since the

Russo-Japanese war the policy of the Russian Government has been to encourage to the utmost emigration to this part of Siberia, believing that a contented and thriving populace would be the best answer to any aggression on the part of China, while from the settlers could be raised local battalions that might prove invaluable in the event of any recurrence of Japanese hostilities. To this end then the Duma recently approved the Bill for the construction of approximately 1,500 miles of railway along the Amur river, connecting Stretinsk, the present terminus of the Trans-Siberian in Russian territory, with Kharbarovsk, an important town and administrative centre situated at the juncture of the Amur and Ussuri rivers and already connected by rail with Vladivostock, the great Pacific port.

The construction of this line will make an all Russian route across Asia, will insure uninterrupted communication at all times and will avoid international disputes such as have arisen and are still in progress over the Russo-Chinese portion of the existing system, while it will offer employment to thousands of labourers who will be encouraged to become permanent settlers.

Free land grants, assistance towards purchasing necessary farm implements, and the despatch to Washington of a representative to study and report on American agricultural methods and machinery, are alike evidences of the seriousness of Russian intentions.

Having reviewed the reasons that have compelled Russia to adopt this line of action, and the steps she has taken to accomplish her desires, it will be of interest to enquire what development may be looked for in this unexploited region and how Canada may benefit commercially by securing her share of whatever trade may be offering. Vladivostock, the harbour of Siberia, is situated approximately at the same distance from Vancouver as is Yokahama, and is open to navigation at all times of the year. Canada should therefore be in a position to supply, easily and economically, a great proportion of imported goods, as at present these must either travel from Moscow by a single line of railway six thousand five hundred miles long, obviously at times causing terrible congestion of traffic; or must make the long sea voyage via the Suez Canal and Singapore, occupying over two months. Though Porto Franco has been abolished recently, under the existing customs tariff machinery, including agricultural and min-

ing, is admitted duty free and the market offered for both is an excellent one. Already Canadian agricultural implements are favourably known in Western Siberia, where they are in successful competition with both the German and American makes. The International Harvester Company of Chicago are opening a branch at Vladivostock, thus showing that they are alive to the possibilities of the situation and intend making a bid to capture the market. Owing to the fact that this corporation are willing to grant more extensive credit facilities than the Canadian firms it is probable that they may succeed. Canadian companies would do well to carefully consider this question of credit, as it must prove the keynote of success. That the market is an increasingly large one may be gathered from the fact that 100,000 new settlers are expected this year, while the population increased from 315,900 in 1905 to 528,400 in 1908. S. Ussuri, the province where agriculture is most extensively carried on, covers an area of 73,700 square miles, and yielded in 1907 crops, chiefly of wheat, oats and potatoes, to the extent of 117,200 tons. It is evident then that the demand for agricultural machinery of all kinds must be a growing one to keep pace with the increase of population caused by the influx of immigrants.

Dairy machinery, such as separators, etc., is mostly imported from Denmark and Sweden, and at present meets with no competition.

Up till now Trans-Baikalia has not been thoroughly surveyed for minerals, but enough is already known to warrant the assertion that it promises to be one of the richest areas in the world. Prior to the Japanese war, owing to the action of the Russian Government in prohibiting foreigners from holding property there, mining enterprise was killed. Now, however, that wiser counsels have prevailed and Government encouragement extended to foreign syndicates only one or two successful undertakings are needed to make the field a recognized one and start a boom.

Gold is found in large quantities along the banks of the Amur river, and American capitalists have already obtained a concession for alluvial dredging, and although reliable information as to the full extent of the gold deposits is difficult to obtain, it would appear that in their richness they will rival the Klondyke, while being far more accessible. Most excellent lead

ore is obtained from the Tyutukhey mine near Vladivostock and is being exported to Europe, while iron ore in large quantities is found in the same locality and only needs exploitation. Of the value of both deposits there is no question. Steam coal is found on the western side of Saghalien island, and as it is on the surface there are no mining difficulties. Russian papers report that a British company contemplates acquiring this deposit and building a harbour to facilitate loading operations. For the rest, as regards machinery, there is a steady demand for portable engines, boilers, pumps, light railways, wire rope, lumbering and saw mill machinery, belting and packing, all of which are supplied by foreign countries, and if Canada can compete in price with Germany and the United States she should obtain a good proportion of such business.

Prior to the initiation of the new Customs Tariff a large trade was done in American flour, which was popular with the Chinese, and was able to compete with the local mills at Harbin owing to the fact that the latter were completely in the hands of the Russo-Chinese Bank and were paying as much as 18 per cent. on money advanced them. The imposition of an import duty on flour will undoubtedly do much to crush this trade, but it might be possible to import Canadian grain for local milling as some considerable time must elapse before the Manchurian grain trade is put on a satisfactory footing. Much the same may be said of canned meats and canned fruits. The consumption of these has hitherto been very considerable; in 1908, 3,300 tons of the latter and 11,400 tons of the former. The bulk of the fruit came from France and California; of the meat from the United States. Though these goods will now have to face a heavy tariff and the trade suffer in some degree, Canadian fruit canners might be well advised to seek an opening for their goods in this market as the demand is bound to exist, duty or no. Condensed milk has an enormous consumption, there being no cattle in the neighbourhood of Vladivostock, and as heretofore will continue to be admitted duty free. This might certainly as well be supplied from Canada as at present from France.

A great export trade from Vladivostock with the United Kingdom has recently sprung up in beans, bean cake and bean oil. The shipments this season are expected to amount to 200,000 tons, and it is anticipated will increase annually. U. S. A.

firms are already negotiating for the purchase of beans, and the oil, properly refined, is of a peculiarly excellent quality. Mention must also be made of timber, the forests of the Amur being amongst the most extensive in the world, while although no regular export yet exists, railway ties have already been exported to South Africa. Amongst the most numerous species are included the oak (*Quercus Mongolicus*), larch, pine, white cedar, fir, spruce, birch, elm and poplar, all in practically illimitable quantities.

From the foregoing it will be readily seen that a great market for manufactured goods of all kinds is being slowly built up on the other side of the Pacific and actually opposite the shores of Canada. At present no direct steamship communication exists between any Canadian or American Pacific port and Vladivostock; but the construction of the new harbour at Prince Rupert may encourage the formation of such a direct service, which would undoubtedly capture much of the freight that is at present compelled to travel 15,000 miles before reaching its destination and causing in addition a terrible delay in delivery.

In view of the political and commercial rapprochement between the English and Russian Governments, the moment is a distinctly propitious one for the commencement of any Canadian enterprise in Siberia, or the introduction of Canadian goods into the Siberian market. The official attitude in St. Petersburg to all classes of British enterprise is one of sympathy and encouragement, and perhaps in Russia more than in any other country does Government sentiment colour commercial relationship. The manufacturer in European Russia, in spite of heavy protection, is still unable to compete successfully with the foreign merchant even as regards price and certainly as regards quality. Most of the equipment for Russian Governmental undertakings, such as railways, is of foreign construction; and if report be true, an American firm has obtained the contract for all rails and constructional material to be used for the Amur railway, mention of which was made in the earlier part of this article. Canadian manufacturers are looking for fresh fields to conquer, and an English railway has even found it advantageous to place an order for railway equipment with a Canadian firm. The Canadian Government should very seriously consider the advisability of appointing a commissioner to visit Trans-Baikalia and

report on the openings for and possibilities of Canadian trade. The expense would be trifling, while the highest aim of any Government would result,—the bringing into amicable relationship, commercially and politically, of two great peoples.

ALAN LETHBRIDGE.

A REMARKABLE FRAUD AND ITS MORAL.

THAT a man should in one day have drawn the same sum (£290) from each of eight branches of the same bank, without having a penny in any of them and without personally forging anybody's name, and that the criminal should have remained undiscovered for over half a year, constitutes one of the curiosities of crime. And our wonder is increased when we learn that the swindler, as if to make his deed more symmetrical, drew the money from each branch in precisely the same denominations (£200 in notes and £90 in gold), and that his signature was the audacious and suggestive one of "D. S. Windell."

As the two confederates have confessed their guilt and only their sentences are uncertain at this writing, it may not be improper or uninteresting to condense the story of the case.

On the 23rd of last September the manager of each of thirteen London branches of the London and South-Western Bank received an advice note informing him that Mr. David Stanley Windell, who was changing his residence, was transferring his account of £726.18.4 from the Harlesden branch to the branch of which the recipient of the advice was manager; that the account had been opened in May, 1905, and that the average balance was £500 or £600. Each transfer advice form was written in the same handwriting, was signed with the name of the manager of the Harlesden branch, and bore the bank's secret code-word for that day—"tack." All the papers had been enclosed in bank envelopes. The signature of the gentleman transferring his desirable account was, of course, enclosed—"D. S. Windell."

That day or the next a well-dressed young man with clean-cut features and, judging by his picture, cool and alert-looking, visited eight of the thirteen branches in a taxi-cab. At each branch he introduced himself as Mr. David S. Windell, interviewed the manager, was informed that his account had been (virtually) transferred, gave his signature (which, of course, was identical with that received by mail), received a cheque-book and drew a cheque for £290, asking for £90 in gold, "as he was

going to the races," he observed in explanation. After leaving the eighth branch he noticed a symptom of suspicion in the driver of the taxi-cab and boldly ordered him to drive to the head office of the bank. This he entered by one door and left by another.

Bankers will doubtless condemn the managers for imprudence or credulity, but on this point the writer is not qualified to give an opinion. But it is manifest that the concocters of this fraud (Francis Reginald King, a clerk in the bank, and Bernard Isaac Robert, who is "D. S. Windell") were actuated largely by a spirit of bravado, an ambition to beat the record or to rival the actual exploit of "Captain Kopennick," and the fictitious exploits of "Raffles." In his confession Robert said:—

"I beg to state, not in order to excuse my action, but merely for the purpose of explaining, that my intention in the first instance was not to obtain the money as such, but rather to feel myself able to do something which many others might feel themselves incapable of accomplishing.

"In other words, it was the devilment, the excitement, the ingenuity, the humour, and the almost impossible success to crown it that urged me to attempt the fraud.

"The very name D. S. Windell—Damn Swindle—goes to corroborate my intentions.

"I am still very young, and that may explain my desire for some excitement."

In the Bow Street Police Court, the prosecuting counsel declared that Robert, who is Dutch by birth, "was undoubtedly a man of exceptional ability. He was a gifted linguist, speaking five or six languages fluently, including English, and was extremely well read. It was almost incredible that he should have become a party to this fraud, and the only explanation was probably the one Robert himself had given in his confession."

King, too, seems to have felt that the boldness and ingenuity of the crime more or less offset its guilt, for he had spontaneously confessed to his father, before his arrest, that he was the man who had engineered the great "D. S. Windell" fraud. It was he who supplied the secret code-word and who signed the name of the Harlesden manager.

The superlative nerve and humour of the German tailor who made a squad of soldiers befooled accessories in a theft has amused the whole world; and the admiration which has accom-

panied the amusement has not done so much harm as it might have done if that particular exploit were less difficult to repeat. But the making heroes of ingenious thieves and burglars—too common in modern literature—has begotten many imitators. The successful burglaries of "Raffles"—published and republished and staged—have probably tempted several youngsters to become amateur cracksmen; and one or two professionals have acknowledged their indebtedness to that burglarious dandy for valuable hints. It is undoubtedly true that the ugliness of a sin can be partially disguised by enamelling it, and that the glorification of criminals must lessen the odium of crime.

In times long past the halo shed in "yellow" pamphlets upon the daring deeds of Dick Turpins and Claude Duvals brought many imitators to the scaffold. Some years ago the writer was shown the nefarious circular of a Chicago firm, mailed far and wide, I was told, to students and clerks in the United States and perhaps in Canada. It contained a price list, not only of improper books, but also of secretly marked packs of cards and other devices for cheating at games. It was prefaced by a humourously cynical remark. The firm did not approve of cheating, it said, but as people would cheat, they might as well do so successfully by using the best machinery. The punishment in the next world (if any) would not be any greater! It is unlikely that these particular scoundrels are doing business still.

Tales in which dishonesty triumphs over law should be discouraged by good citizens and refused by patriotic publishers; but detective stories in which the agents of the law circumvent the ingenuity of crime, while quite as interesting, are not demoralizing to the young. There are *soi-disant* reformers and philanthropists, both clerical and lay, who confine their righteous indignation to swear-words and Sunday recreations and moderate drinkers, and have no word of protest for literature that saps the honesty of their nation. Nor do they launch the vials of their wrath upon the most demoralizing of all heresies—that there should be one moral standard for private life and another moral standard for politics. Where this false doctrine prevails, the standards are bound to approximate, by the former lowering itself towards the level of the latter.

F. Blake Crofton.

CONFIDENCE AND THE CURRENCY.

An Address by L. P. HILLYER, Vice-President of the American National Bank, Macon, Ga., at the Tennessee Bankers' Convention.

THE bankers' associations of this country are powerful disseminators of financial knowledge. The annual conventions of the various associations are addressed by scores of speakers from all over the Union upon every conceivable subject of a financial nature. Most of the speakers are thoroughly familiar with their subjects and are masters in debate. Some few, like myself, however, must dig and delve for days and nights in order to gain a little information which their auditors might not know, but their labor is not in vain if some important knowledge is imparted. We bankers, through the powerful machinery of our associations, can go far towards educating the people in the science of political economy, and it is our patriotic duty to instruct whenever possible. Just here, you may say to me: "That is true, but why should you talk about 'Confidence and the Currency,' at this time? Is not Confidence restored? Is not our Currency safe and ample?" So far as the immediate present is concerned, I answer "yes," but this country will never be safe from a repetition of the terrible time of 1907 until we have a better monetary system.

Our currency is safe enough and confidence in its safety was never shaken, but did that fact prevent the panics of 1893 and 1907? It was the fear that this good currency would be exhausted that caused people everywhere to hoard it, thereby paralyzing the financial world. What we must have is a monetary system which will give us a currency that is equally as safe as the currency we now have, and elastic enough to respond to all legitimate demands of trade. There are several great problems in political economy with which every civilized nation has to deal. The currency problem is one of these, and the best time and talent of the world's greatest statesmen and political economists has been spent upon this problem. Several of the Euro-

pean nations have progressed far towards the realization of a perfect currency, but the currency of the United States, instead of being a perfect currency, is a standing menace to the financial welfare of our nation. For a currency to be perfect, it must be flexible, automatic and safe, and the people must be confident that it is flexible, automatic and safe, for, without such confidence, no kind of currency will successfully meet the requirements of trade.

The basis of all business credit is confidence. It is the synonym of faith. The safety of a nation depends upon its righteousness, and, as there can be no righteousness without faith, a national's sole palladium is confidence in its rulers, its laws and its institutions.

The Panama Canal may become a finished monument to our greatness; the wisest and best tariff bill ever drafted may be enacted into law and all other important issues be satisfactorily adjusted; wheat may sell for $2 per bushel, cotton for 20 cents per pound, and other commodities at corresponding prices, but this country will never be safe from financial panics until the monetary system is firmly established in which all classes of our citizens will have an abiding confidence.

I do not profess to be an expert in the science of money and will not suggest any original currency plan, but, if I can help to create a far-reaching sentiment for a better currency, and, through the agency of this and other associations, assist in inciting the giants of finance to plan and fight for it, I will be content. Like the trumpeter in the fable, while I may do no actual fighting myself, I will do what I can to incite others to fight. Just after the panic of 1907, and before the tariff issue was raised, the currency question was paramount and occupied the attention of the nation. A great number of currency plans were suggested, one of which—the Aldrich-Vreeland plan—was actually adopted by Congress. This plan is not popular. It does not meet with the approval of expert economists, and many students of finance are doubtful as to its ultimate value.

I get from the American Bankers' Association statistics relating to the issuing of clearing house certificates during the last panic:

"The aggregate amount issued by the clearing houses of Boston, Pittsburg, Milwaukee, Indianapolis, Minneapolis, Des

Moines, Buffalo, Salt Lake City, New Orleans, Cleveland, San Antonio and Chicago is $46,509,000; the gross issue for New York City is $101,060,000."

It is estimated that over $100,000,000 were issued by other clearing houses of the country. It is safe to say that over a quarter of a billion dollars of clearing house certificates were issued during the panic under the various conditions, and by clearing houses composed of all classes of banking institutions. Hon. Charles H. Treat, Treasurer of the United States, says:

"It is quite true that not one dollar has ever been lost by the holder of clearing house certificate."

Now, such a record as this through the worst currency panic the world ever had, should create absolute confidence in a well-protected clearing house currency, based upon the assets of associated banks.

The immense power of the French banks in the money markets of the world is due to the unlimited confidence the French people have in their currency.

There is no reason why we Americans cannot be imbued with the same confidence in our national currency—not merely the confidence that our currency is safe, but the confidence that there will always be a sufficient quantity for every legitimate demand.

James G. Cannon, vice-president of the Fourth National Bank of New York City, one of the ablest bankers in America, and an eminent authority on credits, clearing house operations and other financial matters, believes that in the adaptation of the clearing house loan certificate we have the solution of the currency problem. In an address delivered at Columbia University on "Clearing Houses and the Currency," he said: "We do not need more fixed currency in this country, but we need flexibility to meet emergencies. This class of currency should be retired immediately as soon as its usefulness is ended."

Mr. Cannon then gave in detail his plan for producing a currency to take the place of that which is hoarded, to be known as "United States Emergency Currency," secured by clearing house certificates, and he truly said: "You can have no better security for circulation of this character than clearing house loan

certificates, issued under proper safeguards, and carrying, as they do, the joint guaranty against loss, of all the members of the association."

It certainly stands to reason that such a currency as proposed by Mr. Cannon would be absolutely safe as well as responsive to the needs of trade, for, as he claims, it would have behind it: "first, the credit of the institution and its collateral, as passed upon by a committee of bank officers; second, the fact that a large margin of collateral is required before certificates are issued; third, the fact that the government is asked to advance only 50 per cent. on clearing house loan certificates; and, fourth, the certainty of its prompt retirement in lawful money of the United States."

Mr. A. B. Hepburn, president of the Chase National Bank of New York City, and an ex-comptroller of the currency, another very able banker, is in favor of a "currency system administered through the instrumentality of a central bank of issue." He said, in speaking of asset currency: "Such a credit currency system could be well and successfully applied to our existing banking system, and in this connection I commend the plan devised by a commission created by the American Bankers' Association and endorsed by that association in its annual convention held in Atlantic City in 1907. While I believe that such a currency can be successfully applied to the 6,500 banks now in existence, yet, judged from a historical and scientific standpoint, the currency system of a country can best be administered through the instrumentality of a central bank of issue. England proved this and created a central bank of issue and provided that the note issuing privilege then possessed by existing banks should revert to this central bank of issue whenever for any cause the various banks should surrender or forfeit the same. United Germany taught us the same lesson, closely following the example of England, but greatly improving upon the English system in respect to elasticity and ability to serve commercial interests. Yet, in this country, the manifest advantages of a central bank of issue are brushed aside on the assumption that public sentiment will not tolerate it. Public sentiment changes with great rapidity, and has undergone and is undergoing pronounced change in the matter of centralization of power and centralization of the control of corporations in the national government.

Why will not a government-controlled central bank of issue, where the banks of the country in good credit can, within proper limitations, discount their receivables, receiving the proceeds thereof in bank notes, afford the best solution of the currency question?"

Hon. Charles H. Treat, in proposing a plan for a "supplemental bank currency," said:

"The present national banking act should be so amended as to permit any national bank, with not less than 50 per cent. of its capital invested in United States bonds, to issue national bank emergency or supplemental currency, not exceeding the remaining 50 per cent., nor more than its capital stock. Such emergency notes I would have similar in form and design to our present national bank notes, but the guaranty thereon should be modified to read: 'This note is secured by bonds deposited with and guaranteed by the United States.' The issue of these notes might be made on four, six or eight months, dating from August 1 or September 1, as may be needed at the time of crop-moving periods.

"I would accept collateral for this supplemental currency issue in the form of state and municipal bonds that meet the requirements of savings bank investments in the states of New York, Connecticut, Massachusetts and New Jersey, such securities to be accepted at 70 per cent. of their market value. I would have the banks make a collateral note to the order of the treasurer of the United States, on four, five or six months, and should it fail to meet the notes at maturity it should be penalized in the sum of 2 per cent. per month until paid, the United States government to guarantee the redemption and payment of all notes so issued at a charge of about 3 per cent. per annum. I would not extend the selection of bonds to other than those of states and municipalities, which have the government power of taxation behind them, as it would be well to limit to this class of bonds and not open the door to the acceptance of railroad, industrial and real estate bonds.

"This plan requires a margin of 30 per cent. on the amount of notes issued, which it would seem would be ample in every contingency to safeguard the government. These notes would have a definite time for maturing, and when they were paid for so much currency would be retired, which practically in a compul-

sory way would prevent any permanent or undue inflation of the currency."

Mr. Treat also proposed the following plan for a National Clearing House Bank:

"The incorporation of a bank known as a National Clearing House Bank, under the present national banking system. Its capital shall not be less than $200,000,000 and not more than $500,000,000, with shares of $500 each.

"Its shareholders shall be from the banking members of the forty-three different clearing houses of the country.

"That any national bank may be permitted to invest not exceeding 25 per cent. of its capital in the shares of such bank, on terms of payment as may be agreed upon.

"Its board of directors shall be chosen from the membership of the different groups of clearing house banks. These directors shall meet not less than twice a year, and receive compensation therefor. From this board of directors an executive committee shall be chosen, who will scrutinize tri-weekly with its officers the affairs of the bank.

"The United States government shall have no participation or dictation in its management.

"The national banks shall be permitted to rediscount their commercial paper with said National Clearing House Bank, not to exceed 100 per cent. on its capital and surplus.

"The National Clearing House Bank shall be a government depositary. It shall be authorized to deal in foreign exchange. It shall be authorized to act as reserve agent for any bank to discount the commercial notes taken by other banks, and for banks alone. It shall be permitted to discount such notes at a rate not exceeding 4 per cent. per annum, and to make an advance thereon not exceeding 75 per cent. of the face value. The balance to remain on deposit until said notes have matured and been paid.

"In times of financial distress the Secretary of the Treasury shall be authorized to receive as collateral for the issue of national bank currency to this National Clearing House Bank, such commercial notes discounted by the National Clearing House Bank and guaranteed by it and the previous discounting bank, to an amount not exceeding 75 per cent. of the face value of said loans, at a rate of 3 per cent. interest per annum, the limit of

credit not to exceed six months. On payment of the notes discounted for said National Clearing House Bank the 25 per cent. balance withheld shall be repaid to said bank.

"This plan would give all the functions and advantages of a great central bank without adding to the confusion of another kind of currency, and at the same time be free from political dictation or control."

I have given you the ideas of three of our ablest men. While their plans may differ, they are a unit in believing that our monetary system should be radically and speedily changed. This is the consensus of opinion of all political economists in America. A national monetary commission has already been appointed with Senator Aldrich at its head. This commission has asked the co-operation of all the commercial and financial bodies throughout the country. The bankers' association of my state (Georgia) has its monetary commission already organized and ready to act with the National Monetary Commission whenever called upon. On account of the magnitude of the currency problem and the great importance of its speedy solution every deliberate body in America should make it a paramount issue.

Cato, believing that Carthage was a standing menace to Rome, sealed the former's fate by the persistent ending of each of his orations before the Roman senate with the declaration: "Carthage must be destroyed!" We bankers of America, believing that our present monetary system is a menace to our financial welfare, should persistently urge our senators and congressmen to give us a better system, and we should never close our various conventions without an earnest plea to our lawmakers. The shibboleth of every American banker should be: "*A proper currency must be devised!*" Out of the many plans proposed by expert students, such as Messrs. Cannon, Hepburn, Treat and others. the present National Monetary Commission, composed of able men, can surely evolve a perfect currency.

PAGET ON BANKING.

By W. F. Chipman, B.C.L.

A SECOND edition of Sir John Paget's work on "The Law of Banking" is to be welcomed. To those who have to spend long hours in research it is always a pleasure to do part of that work in pages written in the clear and incisive style of this author. Nor is it less satisfactory to find him with a mind of his own. The libraries of the law contain too many books that are mere compilations of cases, mere spectators of a development which could not fail to gain from criticism. A book such as the present reminds us, by contrast, that the doctrines of business law should have no other ultimate foundation than reasonableness. And, although Sir John writes chiefly from the point of view of the banker, and is not averse from giving the latter now and then a judicious hint in matters of policy, he is always careful to ground his counsel upon broad principles, knowing that broad principles, leading to consistency of practice, are the best refuge in matters of doubt and may well be expected to create the needful certainty.

The work has been made longer by some eighty pages. A good deal of the additional matter does not especially concern Canadian readers. It has to do with the new English Bills of Exchange (Crossed Cheques) Act and the Public Trustee Act, both of 1906.

There are, however, some extensions of the text of great interest to those who watch the tendencies of the law. Such persons have already remarked that the civil courts are beginning to enforce moral duties as well as legal rights—duties, that is to say, arising not from contract or from fault, but as the silent result of circumstances. It is no longer enough in law to live up to one's bond, or to refrain from injuring another; one also, if one have the power to prevent another from being injured, must exercise that power, where the cause of the injury is the cause also of a failure in the other to discharge an obligation to one's self. And one must do this on pain of bearing all the con-

sequences of the injury. We find something of this on page 168 of Sir John's book, as follows:

"There is in recent law a tendency to enlarge the sphere of duty, breach of which may preclude a man from asserting his strict legal rights. Failure to fulfil a moral duty has been recognized as having this effect. In McKenzie v. Linen Bank, 6 A.C., 82, McKenzie was not a customer of the bank, though he is referred as such in Ogilvie v. West Australian, etc. (1896), A. C., at p. 268. The duties attributed to him, therefore, were purely moral ones; but the House of Lords attached to the breach of them the same consequences as if they had been strictly legal duties. In Ogilvie v. West Australian, the judicial committee refer to the rules of 'fair dealing between man and man' as capable of imposing a duty from customer to his banker. In Ewing v. Dominion Bank, (1904), A.C., 806, Ewing & Co., whose name was forged, were not customers of the bank, and the whole judgment of the Canadian courts, practically affirmed by the Privy Council's refusal to give leave to appeal, and the expressions used in so refusing, was based on the moral duty laid on a man who knows or has reasonable ground to believe his name has been forged to a negotiable instrument to give speedy notice to anyone likely to be injured thereby. (See Canada Supreme Court Reports, Vol. xxxv, 133; 70 Ontario L. R., 90)."

And from page 208 in much the same connexion we might cite as follows:

"The obligation, outside any contractual relation, is based on a duty hitherto hardly recognized as a moral one, but now elevated to a legal one. The obligation and duty require that a business man, or even one unconnected with business, must not willingly allow a fellow-man, or even a body corporate, to be prejudiced by the fraudulent use of a forged instrument to which he has set, or appears to have set, his hand."

We might ask whether all this is not merely an extension of the simple doctrine that one must bear the consequences of one's own neglect. If A be unable to fulfil his duty to me because of some fact which I could have prevented, his failure towards me is really my failure towards myself; and mine should be the loss.

The former of our citations was apropos of the doctrine of the stated account in connexion with the pass-book. That

doctrine was discussed in this journal last year (No. 3 of Vol. 15), when some stress was laid on Sir John Paget's argument in his first edition in favour of the view that where a customer receives his pass-book from the bank and does not object to the entries in a reasonable time, he is precluded from questioning the correctness of those entries unless he can show some good excuse for having overlooked some error subsequently discovered. The argument is repeated in the present edition with some hope on the author's part that, although this view has been rather discountenanced of late in England except with regard to cases in which evidence might be made of business custom, the matter may yet be put upon what he considers a proper basis.

Two English cases have been decided since this second edition went to press, in which these principles were touched upon; but it can hardly be said that the matter is much farther advanced, despite Sir John Paget's endeavours. The first is the case of Holland v. The Manchester & Liverpool District Banking Co. (xxv, 7 L. R., 386), argued before the Lord Chief Justice on the 27th of February last. The plaintiff, a customer of the defendant bank, finding on examination of his pass-book that it showed a balance of £70 17s. 9d. in his favour, drew a cheque for £67 11s. in favour of a firm to whom he owed that amount. On the cheque being presented by that firm it was dishonoured by the defendants, whereby the plaintiff suffered damage in respect of which he sued the defendants. It appeared in evidence that at the time the plaintiff drew his cheque his balance amounted to £60 5s. 9d. only, but that in his pass-book one of the bank clerks had, in error, entered to the plaintiff's credit the sum of £10 12s. twice, with the result that from the pass-book the plaintiff appeared to be in credit to the amount of £70 17s. 9d. The evidence showed that the plaintiff had not been guilty of any negligence or fraud in the matter. In the course of his remarks Lord Alverstone said: "The effect of a pass-book entry did not seem to have been clearly decided in the courts, but he considered that, whilst the bank in this case were entitled to have any wrong entry ultimately corrected, until the correction was made, the customer had the right to act upon the bank's statements in the pass-book, and to receive them as statements by the bank that there was so much money to his credit. The pass-book in all cases, although subject to adjustment, was *prima*

facie evidence against the bank of the amount standing to the credit of the customer, upon which that customer, in the absence of negligence or fraud on his part, was entitled to rely. He was supported in this view by the judgment of Lord Campbell in Commercial Bank of Scotland v. Phind, (3 Macq. H. L., 643)."

Here then, we have the other side of the story, the bank binding itself by the pass-book. But it must be said that the Chief Justice acknowledged his judgment to be a hasty one, and that it is unsatisfactory in so far as it failed to discuss the cases in point. The judgment seems to take up a position half way between the doctrine of the stated account and the ordinary principle of responsibility for the damage caused by one's own negligence.

The second case, Kepitigalla v. National Bank of India, xxv, 7 L. R., 402, was decided on the 9th of March by Mr. Justice Bray. It was a case of forgery by the secretary of a company and the latter sued the bank to recover the amount of the forged cheques as improperly debited to its account. The defendant bank disputed the forgeries and set up two defences (1) that the plaintiff had by its conduct and negligence misled the defendant and caused or permitted it to be misled into paying the cheques; and (2) that the plaintiff adopted the cheques, and that accounts were stated and settled on the footing that the cheques were properly debited. The judge dismissed the defendant's points, and with regard to the latter said:

"The last raises a more important point, though I should add that it was not seriously pressed before me. It is this: That when a pass-book is taken out of the bank by the customer or some clerk of his and returned without objection there is a stated account between the bank and the customer, by which both are bound. I know of no authority in this country for this proposition. The cases on the subject will be found in Sir John Paget's book on the Law of Banking, chapter 12. "The Pass-Book." One of the cases there referred to, "'Chatterton v. London and County Bank," appears only to be reported in the "Miller." Sir John Paget has been good enough to let me see that report. That is not, of course, an authorized report, but one cannot read it without being impressed by the fact that it must have correctly stated Lord Esher's language. At all events they seem very good sense. The new trial of that case was re-

ported in the *Times* as well as in the *Miller,* and the observations of Mr. Justice Mathew, on p. 159, are most pertinent, and, as it seems to me, most sound. The point was strenuously argued in Vagliano v. The Bank of England. In the Court of Appeal (5, The Times, L. R., 489, at p. 496; 23 Q. B. D., 263), Lord Justice Bowen says, delivering the judgment of five Lords Justices: 'There is another point to be considered. The plaintiff from time to time received from the bank his pass-book, with entries debiting the payments made, for which the bank sent the bills as vouchers, which were retained by the plaintiff when he returned, without objection, the pass-books. It was contended that this was a settlement of account between him and the bank, and that he had been guilty of such negligence with respect to the examination of the vouchers as would have prevented him from being relieved from the settlement of account. But there was no evidence to show what, as between a customer and his banker, is the implied contract as to the settlement of account by such a dealing with the pass-book, or that, having regard to the ordinary course of dealing between a banker and his customers, the plaintiff had done any thing which can be considered a neglect of duty to the bank or negligence on his part.' It will be found that there is nothing in the judgments of their Lordships in the House of Lords casting any doubt on this statement of the law. So far from there having been any evidence before me such as Lord Bowen refers to, there is evidence to show that they desired a settlement of the account and that they took steps for that purpose. Every half year the defendants sent a form for their customers to sign, acknowledging the correctness of the balance. They sent such a form to the plaintiff on December 3, 1907, and it was acknowledged as correct. They sent a similar form on June 30th, 1908, with a balance based on the assumption that the forged cheques were properly debited to the plaintiffs, and the plaintiffs refused to acknowledge it as correct. I was referred to an American case, 'Leather Manufacturer's Bank v. Morgan,' (117 U. S. A., 96). I do not think it necessary to say more about that case than that the facts as stated in paragraph 5 on p. 100, are quite sufficient to distinguish it from the present case, and that it has never been acknowledged by any court or judge in this country as correctly stating our law. Lastly, there is the case of Lewes Sanitary Steam Laundry Com-

pany (xcv, L. T., 444), to which I have already referred. In that case it appears that the real pass-book was seen at least once by the directors when it contained entries of three of the forged cheques, and it was returned without objection; but this was held to be no answer to the plaintiffs' claims. Apart from authority one has only to look at the facts of this case to see how absurd it would be to hold that the taking out of the pass-book and its return constituted a settled account. It would mean this—that a secretary of a company by going to the bank for his own purposes in order to prevent the discovery of the fraud, and without knowledge on the part of any of the directors, and getting the pass-book (with a pencil entry in it of the balance), can bind the company for all purposes. In my opinion all the defences set up by the defendants fail."

Of course the last remark of the court touches upon a matter with which the doctrine of the stated account is not concerned, namely, as to how far an agent binds his principal. And criticism further points to the judge's statements that the question was not fully argued before him and to his distinction between the facts of this case and those of the cases in which the doctrine has been applied. Something may yet occur in this case by way of appeal, as well as in the case of Holland. In the meantime our author's hope remains unfulfilled.

Turning to chapter xix on "Securities for advances," particularly with regard to pp. 311 *et seq.*, we note another case which has been decided too recently for consideration in this edition, but which is of importance,—the case of Cuthbert v. Robarts, Lubbock & Co., xxv, T. L. R., 211 and 583. Here, a broker, instructed by a client to obtain a loan for the purchase of certain American stock and to deposit certain English stock with the bank as security, failed to make the required investment, though depositing the English stock with the bank. Cheques drawn by him were honoured by the bank on the strength of his client's stock with knowledge by the bank of his position with regard to them.

The Master of Rolls giving the judgment in appeal said, after dismissing certain contentions made by the broker's client against the bank;—"But there is a ground upon which I think the plaintiff is entitled to succeed. The bankers cannot claim a general banker's lien except upon the customer's own property.

The transaction between the manager and Cancellor (the broker) was not a deposit to secure the balance from time to time due on his current account. The deposited authority was only 'to borrow money upon' the shares. If a customer draws a cheque for a sum in excess of the amount standing to the credit of his current account, it is really a request for a loan, and if the cheque is honoured the customer has borrowed money. But it does not follow that such a simple transaction is a borrowing upon a security not belonging to the customer and known to the bankers to be deposited for a special purpose. In my opinion the mere drawing of a cheque by Cancellor, without any reference to the security, was not a borrowing upon the plaintiff's shares. It was not intended by him to be an act done in pursuance of the authority, and the bankers could not, by their own mere volition, treat it as an act done by Cancellor in pursuance of the authority. For this reason, which is substantially that adopted by Mr. Justice Joyce, I think the appeal fails."

These cursory notes force upon us the melancholy truth that a law-book can never be up-to date. The better such a book is the more does each fresh edition set us waiting for another still fresher. It will not be long before the present volume will need a third issue.

THE CHINESE STUDENT MOVEMENT AND COMMERCIAL RELATIONS.

UNITED STATES Bureau of Education. Bulletin, 1909, No. 2. Admission of Chinese Students to American Colleges. Washington, Government Printing Office, 1909. Pp. xiii, 221.

The government of the United States, through its Bureau of Education in Washington, has within the past few months issued a publication which deserves more than passing attention from those interested in the relations, commercial and otherwise, between America and China. The publication comes in the form of a bulletin entitled: The Admission of Chinese Students to American Colleges. Though limited in scope to questions involved in entrance examinations and university matriculation, the effect of the bulletin is really something much broader. It sets forth the conditions under which Chinese students may find their way into American universities, and the inducements which are there held out to them in the shape of scholarships and special privileges. In size the bulletin covers nearly two hundred and fifty pages, and it is evidently regarded by the United States Bureau of Education as one of its most important publications. Some thousands of copies have been struck off and forwarded to American consular offices in China for distribution among the new schools and colleges from which American universities are drawing their Chinese students. One can readily believe that the circulation of so much carefully prepared information about the colleges and universities of this continent will undoubtedly stimulate the flow of Chinese students across the Pacific. Such a movement suggests not a few questions for review and discussion.

To begin with, some significance may be attached to the origin of this work. The demand for its preparation did not come from this side of the Pacific: indeed, only a few American colleges have Chinese students; to most of them the presence of

undergraduates from the Orient would mean a new and perhaps quite serious problem. One or two, as, for example, the University of Pennsylvania, with a registration of thirty-three Chinese, issue separate bulletins or pamphlets of their own in the Chinese language and send them to China for circulation. These local individual efforts to attract students must not be confused with the bulletin cited above. The latter, being a government work, and therefore official in its character, may be considered as a national appeal, with a more or less national object in view. Yet, although it speaks in the name of American colleges as a whole, these did not inspire the appeal: few of these, in fact, are awake to the possibilities which the appeal involves. The demand for the publication of this bulletin came from American merchants and residents in China, who feel now and appreciate the need as well as the opportuneness of an American educational propaganda. Interested as well as disinterested motives were undoubtedly mingled in the wish that the government of the United States should openly offer the hospitality of American universities and colleges to the rising generation of intellectual Chinese. The spread of academic influence, in itself, may well be thought worth striving for, and a strong national American impress upon the new educational movement in China is not beneath the efforts of the American government. It would, as the United States Commissioner of Education says, (Introduction, p. x.) strengthen the "spiritual bonds" between the two countries. That admittedly is true. But that it would strengthen at the same time more material bonds is equally true, and it is this phase of the question which commercial and business interests would do well to consider.

That China is now an open field for educational propaganda, and that it has only become so within the last five years, appears from the personal report of the editor of the bulletin, himself a former official of the Chinese government. As special educational commissioner, he writes:—

"Five weeks' residence in Shanghai and a five weeks' tour in northern China have recently given me valuable opportunities of again coming into touch with the chief educational centres and of investigating the main features of what is known as the 'new learning.' My last visit to China was five years ago, and during this period the conservatism which characterized the

national education in past centuries seems to have disappeared. In its place there is what may almost be called a 'wild craze' for western learning pervading all classes of society.

"To satisfy this growing demand an elaborate national educational system has been organized, covering almost every branch of instruction from the elementary to the most advanced. This system is now being carried out as far as circumstances will permit under the direction of the central board of education at Peking, with a provincial board in each Province. The most strenuous endeavors are being made and great sums of money expended to establish new schools and colleges. Almost as much seems to be done by private individuals as by the Government itself.

"From the very outset it was felt that the masses of the people could be instructed only through the medium of their own language. Hence the want of competent Chinese teachers and suitable Chinese text-books has been keenly realized. To provide these in sufficient numbers and of adequate grade, as well as to keep China in touch with the progress of western civilization, many of the most intelligent young men and women have been sent to study abroad. It was found that these required a thorough Chinese education to begin with, together with good elementary attainments in a foreign language and in some of the branches of western learning, before leaving China.

"It was easily seen that such students, entering the universities of America and Europe and graduating after a full course of study, would be able, on returning to China, to prepare text-books and fill all important positions in schools and colleges under the boards of education, while many of them could hold offices in the various branches of the civil service where a knowledge of sciences and arts or of international affairs is indispensable. With such pioneers as a basis it appeared possible to educate the whole country through the medium of its own language in a comparatively short time.

"Within the few years that have elapsed since this new educational movement has commenced, hundreds of promising young men and a few young women have gone from China to Europe and America on their own account to complete their education. At first it was thought that Japan was able to furnish the desired instruction, and accordingly thousands of stu-

dents flocked to Tokyo, only to meet with disappointment. A residence there of a year or two at the most sufficed to show that since America and Europe have been the sources from which Japan has obtained her instruction, it would be preferable for China also to get her knowledge from those countries at first hand. Hence the tide has now turned in the direction of America and Europe.

"For many reasons, which it is not necessary to particularize, America is the favorite country for Chinese students, notwithstanding the many drawbacks which have existed in former years, but which have fortunately now been almost entirely removed. Every year is certain to find an increasing number of young people, the flower of the eighteen Provinces of China, desirous of wending their way to 'the beautiful country,' or to the country of the 'flowery flag,' as they call the United States. Furthermore, there is a strong desire on the part of the American people to be on the most friendly terms with their Chinese neighbors on the other side of the Pacific. This is shown not only in the recent relinquishing of the Boxer indemnity money in the hope that it will be applied to the purposes of western learning, but also in the willingness expressed by the leading colleges and universities in America to receive Chinese students on the most friendly terms and to aid them in every possible way."

Clearly then the Chinese have begun to take western learning seriously. What the results of the new educational movement, embraced with so much zeal and thoroughness, may mean, will be one of the interesting world problems of the next few decades. With a national consciousness developed through a modern system of education, China would have a position among the great powers concerning which it is still too early to speculate. Should the new system of education receive direction and form principally from the United States, the latter power might have a not unenviable influence in the China of the near future.

How strong the educational influence now is, and how much stronger it is likely to become, the bulletin under review shows. There are now about three hundred Chinese students in the United States, either in colleges or in college preparatory schools. A fair proportion of these, as the editor of the bulletin points out, will return to their country to become instructors

and professors in the new provincial schools and colleges. Remaining loyal to their American alma mater, as they all certainly do, they will undoubtedly encourage the movement of promising young students to pursue advanced work and research in American universities. This, of itself, would suffice to continue the dependence of the new educational movement upon the colleges of this continent. The relationship once started is not likely soon to cease.

There are other things which will tend to strengthen the movement. The American university system, more elastic than that of England or of continental Europe, is able to adapt itself without radical alterations to the particular needs of Chinese students. It is needless to mention the fact that many colleges in the United States have at their disposal funds which are now being used as special scholarships for men from such educational institutions as those at Peking, Tientsin, Shanghai and Nanking. Thus the expense, heavy at best, of crossing the Pacific and of taking up residence in a foreign country, is somewhat reduced, and that is not an unattractive feature in inducing men to prefer America to Europe.

There is, however, a further attraction, which must weigh heavily in the balance as between Europe and America. Almost without exception every Chinese student going abroad looks forward to returning with a degree; for a degree in arts, science or law obtained at a foreign university of recognized standing is now given official recognition in the grades of Chinese civil rank. But such students, having neither desire nor use for the classical languages, and having already studied English as a "foreign" language, are obviously at a disadvantage in fulfilling matriculation requirements at the older conservative colleges which still maintain their classical standards. Now, not only do men matriculate into American colleges without a prerequisite knowledge of Latin or Greek, but also, in the special case of Chinese students, their knowledge of Chinese, provided they know English fairly well, is counted to them as a language attainment. (The same would hold for a Frenchman or a German whose knowledge of his own tongue might satisfy college requirements in that subject.) In other words, Chinese has been admitted, under exceptional circumstances, as an academic subject, and due credit is obtained for it in the college curriculum.

This seems eminently fair, when one considers that Chinese students return to their own country to practise their profession, and that a knowledge of Chinese literature has for them precisely the culture value that a knowledge of our own literature has for us. The American college thus meets the student from China half way, and instead of imposing upon him rigidly the full requirements of a European culture, relinquishes all except the essentials and substance of direct professional training.

On this point the editor of the bulletin says:—

"It is readily conceded that between an American and a Chinese student the differences in traditional culture make a readjustment of college entrance requirements not only desirable, but at the same time equitable. Most of the larger universities and colleges of the United States admit the principle of readjustment in favor of Chinese students. Each institution, however, applies rules of its own in carrying this readjustment into effect. Those which consent to modify entrance requirements in favor of Chinese students proceed usually upon the principle that a good working knowledge of English and facility in at least one modern language other than English are essential to all Chinese students, but that the study of the European classical languages, Greek and Latin, while very desirable, is not so essential. It is usually taken for granted that a good knowledge of the Chinese classics fulfills for Chinese students the purpose effected by the European classics for the English-speaking students. Consequently an equivalent amount of proficiency in the former may be offered and accepted as a substitute for the latter."

Further, American universities now give full recognition to the preparatory training done in Chinese schools, and admit graduates from these schools either without examination at all, or, in some cases, with only a partial test. The United States Bureau of Education, desirous of finding to what extent this is being done, sent enquiries to several colleges. A few of the replies reveal the adoption of the principle to which allusion has just been made. To take some characteristic answers:—

University of California.—In receiving and classifying students from the Orient, we accept certificates in lieu of admission examinations—just as we do for students in our own country—provided the applicant has completed at least the equivalent of

a satisfactory secondary course, that is, the equivalent of a good high school course of four years according to our standards. We allow liberal substitutions of Oriental languages, literatures, and histories for our own electives in corresponding fields, though we do try to insist upon a fair working knowledge of the English language and literature.

Northwestern University.—An equivalent education and a fair knowledge of English will be accepted in lieu of the usual admission requirements or examinations. Students would need to bring proper certificates.

University of Chicago.—The university has been liberal in interpreting admission requirements for all foreign students. Since some of the admission requirements are prerequisite to further study, not all can be replaced by "equivalent" attainments in other lines. English, at least one European language, history (English and United States), and mathematics (algebra and geometry), should be considered as necessary.

Columbia University.—Apart from the regular collegiate examinations in English, the university has no formal examinations to test the knowledge of foreigners. No student, however, who understands enough English to profit by instruction need fear embarrassment on this score.

University of Pennsylvania.—The University of Pennsylvania will accept the credentials from accredited institutions in China and omit the usual written requirements and examinations in all subjects covered by these credentials.

Leland Stanford Junior University. — Candidates from China are admitted who show credentials covering the satisfactory completion of courses of study equivalent to those of approved American high schools. Before admission to the university such candidates must show ability to use and to understand readily both written and spoken English.

Harvard University.—The faculty has adopted certain regulations to govern the treatment of Chinese applicants for admission to Harvard College. If they can show that they have graduated from a Japanese Government middle school or from a Chinese provincial high school or from private schools certified as of equal standing with respect to the amount and quality of instruction in oriental classics, they will be excused from examination in ancient languages (Greek and Latin), counting

eight points. They may also be excused from presenting for admission an elementary modern language (French or German), but will be required to take, as part of their work for a degree, a course in French or German more advanced than the elementary course. In English, history, mathematics, and science they must satisfy the Harvard requirements in the usual way. Such men, therefore, are admitted partly on certificate, partly on Harvard examinations, with the further provision that a part of the work prescribed for them may be taken in college.

In case Chinese students have already begun work of a college standard in China, and can show a record of good scholarship, they may be admitted without examination. This was the case with the students from Tientsin, and their high average of scholarship, while at Harvard, fully justified their admission on these terms.

Massachusetts Institute of Technology.—An applicant from a foreign country is in general excused from our entrance examinations provided parents or teachers (or the applicant himself, when of age) are ready to take the responsibility as to his preparation for our work. Thorough preparation in mathematics and facility in the use of English are essential.

Yale University.—The only change that we make in entrance requirements in the case of Chinese students is that a knowledge of the Chinese language and literature is accepted in place of the Greek requirement or its alternatives in the academical department, and the substitution of Chinese for Latin in the scientific school. We make a special point of emphasizing the importance of a good knowledge of English before admission.

Degrees from representative Chinese institutions, such as St. John's College, Shanghai, and Tientsin University, are accepted for admission to the Graduate School as would be the degrees of American institutions of rank.

All of which goes to show how closely the educational systems of the two countries are coming into touch with one another, and the grounds upon which it is safe to assume that the connection will tend to become closer and closer.

As suggested above, the results of the connection go beyond mere academic influence; and on this, in conclusion, some stress may well be laid. It has, without question, a stimulating effect upon the trade and business relations of the two countries con-

cerned, and the effect is likely to be felt for some decades. The reason for this is quite patent. For some time to come China will be a heavy purchaser of machinery and construction material. Chinese students acquiring their professional training in the United States, become acquainted with American machinery and manufactures. As the majority of such students devote themselves to branches of applied science, particularly engineering, they naturally come to prefer American products to those from countries with which they are not familiar. In other words, every Chinese educated as an engineer may be regarded as a possible purchaser, direct or indirect, of the material and equipment necessary for his profession. Thus the new industrial China, in which Americans are so much interested, may be counted upon to look to the United States as the favoured nation from which supplies for the new industrial economy may be drawn.

Space does not permit the further development of this topic. It is hardly necessary to point out the opportunity open to Canada and to Canadian colleges and universities to assist in a movement which might give the Dominion a larger share in the traffic across the Pacific. Bridge materials, electrical supplies, agricultural implements might readily find their way to China in competition with similar products from the United States. A few business firms might discover that a scholarship or two for Chinese students at a Canadian university would not prove an unprofitable form of advertising; and the Canadian government might reasonably be expected to assist in a Canadian educational propaganda which would promote closer relations between countries having such a natural interchange of products. It would seem to be a most advisable step towards the development of Canada as a power on the Pacific.

C. E. FRYER.

THE SIGNIFICANCE OF THE LLOYD-GEORGE INNOVATION.

By T. C. Allum.

THE most striking feature of the Lloyd-George budget is that it contains a proposal which indicates a comprehension of economic problems on the part of those responsible for it.

In the years to come, when the levying of taxation shall have become automatic because of its naked justice, this budget will probably be raked out by antiquarians and pointed to as an epoch-making document.

Along with many propositions which are fully as objectionable as those contained in other budgets, is a feature which rescues the document from the entire condemnation to which the others are fully entitled. This feature is the proposal to recover in taxation one-fifth of the increase in values which come to land in the future.

This is a departure in principle from other budgets and from the remainder of the Lloyd-George budget.

It is an effort to levy taxation according to benefits received instead of according to ability to pay.

Although the announcement that the proposals of this budget were being condemned by prominent bankers and business men of London contained no information as to the particular feature to which objection was taken, it is by no means impossible that this proposal did not meet with favour.

It is a fair assumption that anything which would be productive of any considerable change in the nature of securities would be regarded by bankers with a certain amount of suspicion, even though these changes promised a measure of relief from other objectionable conditions.

At the meeting held in London, it was resolved that the "main proposals of the budget weaken security in all private property, discourage enterprise and thrift and would prove seriously injurious to the commerce and industry of the country."

It was referred to as "an innovation in the history of British finance which was unsound and unjust and would drive capital out of the country."

It sounds very terrible and it *is* very terrible. It is all the *more* terrible when it is recollected that the majority of budgets are deserving of just such denunciations. Revenues are commonly raised by taxes placed upon the products of man's industry, that is, on the value of buildings (thus "discouraging enterprise"), on incomes (thus "weakening security in private property"), on business (thus proving "injurious to commerce"), on possessions of all kinds (thus "discouraging thrift and driving capital out of the country").

The Lloyd-George budget, unfortunately, contained provisions for these and many other taxes—but so has every other budget ever brought down in England. To this extent, the Lloyd-George budget must plead guilty to the charges made against it—but so must all other budgets. The Lloyd-George budget probably hits the capitalistic interests harder than previous budgets, thus incurring the hostility of these interests. Lloyd-George found himself in an unusually difficult position and applied the screws harshly. But, in respect to the taxes mentioned, he in no way departed from the *principle* of previous budgets which possibly met the approval of his critics. He simply increased the amount of the taxation, getting it, as did others, the easiest way.

The bankers and business interests, at the meeting referred to, made one charge which does Lloyd-George distinguished honor, though such might not have been the intention. They charged him with introducing an innovation. This is the only charge which could not have been made with equal justice against other budget makers. Whether the criticism had reference to the only proposal which *did* involve an innovation in principle—namely that of the tax upon the future increase in land values—or to certain objectionable proposals which were not innovations in *principle* but merely in *degree,* is hard to say. The criticism, however, gives occasion for a few remarks upon the real innovation.

In the course of time it has come to be recognized that the protection of the country by soldiers and of the citizen by police, the providing of roads throughout the country and of streets in

the towns, the lighting of those streets, and many other services of like order, properly belong to the functions of government. Whether the conclusion is correct or not is neither here nor there, at the moment; the fact is, the government is supplying them and requires revenue to discharge its obligations. The question immediately arises: how shall this revenue be obtained from the community? Shall we, desiring the beneficent results of justice, mark our course out in exact harmony therewith, or shall we get this revenue any way we can? That is, might we, as a government, steal it? If so, shall we punish the citizen for theft?

Shall we, following the principle—or lack of principle—of previous budgets, levy taxes on incomes, trading, imports and possessions of all kinds (though these possessions be not ours)? Shall we put the inquisition into force to discover where the hidden wealth may be? Shall we as a nation disregard the justice we willingly grant to one another as individuals? Shall we get this revenue hap-hazard, wherever we can, wherever the rightful owner has not the strength to resist our demands?

Shall we, ignoring all the principles recognized in business and commerce, levy the tax according to ability to pay, or shall we levy it according to benefits received?

The innovation in principle in the Lloyd-George budget is that, in the proposition to derive revenue from the future increase in the value of land, the call of justice is given ear to.

It may probably be asked wherein lies such a departure in principle between the methods of taxation proposed and that contained in previous budgets or in the remainder of this budget.

It is not possible, in a short article, to give a reply which would sufficiently illuminate the whole subject. It may suffice, however, to point out that in taxing the increased value of land, the government is simply taking back that which it *has* given, whereas, in all other forms of taxation it is taking what it has *not* given. A very considerable difference, is it not?

The public services performed by government—whether federal, provincial or city—add value to the particular district or locality affected by those services. If they did not there would be no sense in having them performed. That seems very clear.

Not quite so clear, is it, though equally true, that these services add value to nothing else. Yet see: Good government is

an aid to production, so that, other things being equal, the cost of production decreases under it. That being so, it is also clear that governmental services do not add value to the products of industry. Besides the products of industry, nothing else exists to which these services could add value save location—that is, ground or land. So that, as we well know, public services add their value to ground; and they add it to ground only.

The government, through these public services, does for the ground what the builder, through the services of the carpenter or paper-hanger, does for the house. But, while the builder sends his entire account to the owners of the houses he has made more desirable, the government sends but a small proportion of *its* account to the owners of the ground it has made more desirable. Instead, the charge is spread out over other peoples' possessions, incomes, businesses, houses and industry, thus violating the very elemental principles of accountancy.

The innovation in the Lloyd-George budget makes an attempt to put these principles into effect. As the value of public services—all public services—necessarily accrues to the land, he proposes to send the bill for them to the owner of the land, instead of letting him go almost free and taxing the public instead, as in the past. His method of doing this is to tax the future increases in the value of ground to the extent of one-fifth. He should have taxed it to the extent of five-fifths in order to adhere strictly to justice, but the opposition would have been too great. The change is a radical one and must be brought about slowly.

Since the Lloyd-George budget was announced, the German and Austrian governments show indication of falling into line. There is a strong agitation to tax what they term the "unearned increment" of the ground, meaning those values not created by the owners of the ground but by the public. It is a big step forward to have the existence, even, of this unearned increment recognized. The Australasian governments have recognized it for years as a proper source of revenue and Europe and America are falling rapidly into line.

The taxes on these increased land values given by the public are the only ones possible towards which the terms of reproach and denunciation used by the bankers are not applicable. They do not "weaken security in all private property" because they

provide for the abolition of the existing system which does weaken it. For the same reason, they would not "discourage enterprise and thrift and prove injurious to commerce and industry;" they relieve these of the tax heretofore levied upon them. They would not drive "capital out of the country," but the contrary. For nothing can be surer than that the introduction of a just system of taxation, in which the measure shall be "For benefits received," will drive out the present system based on "Ability to pay." Now that the Lloyd-George budget has brought the matter forward and Germany and Austria are agitating for it, the United States and Canada will take the plunge just so soon as their budget requirements compel.

TWO KINDS OF BORROWING—FOR WAR PREPARATIONS AND FOR PRODUCTIVE WORKS.

WHEN Canada's financial affairs are being discussed the argument is often heard that our national borrowings, past and present, are fully justified by the fact that they have been effected, not for wars or armaments, but for reproductive works and purposes. Usually the point is conceded without resistance, and small opportunity for discussion is presented. At the date of writing the Dominion Parliament has just granted authority to the Ministers of the Crown to pledge Canada's credit for a further loan of $50,000,000, the proceeds of which, like the proceeds of most of our earlier loans, are to be applied towards the construction of works expected to enhance materially the Dominion's revenues and to stimulate its progress. The time, therefore, seems to be opportune for inquiring more minutely into the matter of the benefits we are to derive from our heavy special expenditures, and for contrasting them with the results gained from expenditures on wars, fleets, and armies by other countries. Such an inquiry and comparison seems the more necessary from the fact that the people of Canada, and the people of the other self-governing parts of the British Empire, are now giving earnest consideration to the question as to the best practical methods by which they can aid the Imperial Government to maintain a safe supremacy in naval matters.

Of course it is pretty well understood that the main difference, in the economic sense, between expenditure for railways, canals, and buildings, and expenditure for battleships, forts, guns, and ammunition, lies in the fact that in the first case assets are acquired which should, under proper management, yield an annual profit, and steadily increase in value, while in the second case the articles acquired are assets only by courtesy; they yield nothing, cost a great deal for up-keep, and after a while they vanish entirely. Thus the railway expenditure can with propriety be charged to capital account, while the other should by right go mainly into the expense column. A clearer view of this fundamental difference may be had by supposing for the sake

of illustration that two wealthy individuals are seeking to borrow money. Each possesses an estate valued at say $5,000,000 over and above debts of a small amount. In each case the estate is comprised in much the same manner, of agricultural land, forests, mills, stores, flocks and herds, implements and machines, and houses. The normal revenue and outgo is about the same in both instances. It happens about the same time that both these proprietors, whom we may call A and B, are impelled to seek extraordinary loans, say $500,000 in each case. A believes certain of his neighbours are intent upon despoiling him of his property. He perceives what he considers are satisfactory evidences that they are arming and otherwise preparing to attack him; and he resolves while there is time to put himself into a state of defence. He arranges for the purchase of a couple of small swift vessels, strongly protected and suitable for the waterways running through his estate and into those of his neighbours, and arms them with quick-firing guns. At strategic points commanding the various roads and highways, he builds strong houses supplying modern guns and weapons for their defence; concurrently with his purchases of this warlike material he takes steps to provide men to use them. A few professional soldiers are imported at considerable cost to act as officers and instructors; then a certain number of the agricultural labourers, a number of the mill workers, of the clerks in the stores, of the keepers of the flocks, are taken away from their regular occupations and formed into a small standing army or regiment. Also it is provided by the proprietor that the remaining able-bodied men on the estate shall, in shifts, give one or two days in every week to instruction and practice in the use of arms. And he himself and his sons devote to the disposition of the armament and forces, and to the arrangement of the plan of defence, a considerable time each day which they had formerly devoted to devising plans for increasing the productiveness of the estate, and improving the condition and effectiveness of the employees and tenants.

The necessary loan is secured without a great of trouble, since A has securities to pledge which are eminently satisfactory to the money lenders; and it may be presumed that, by reason probably of his military preparations, A's estate remains free from attack. But it develops that he is unable to reduce his

warlike establishment, for his neighbours, alarmed at his powerful state and not wishing to depend for their safety upon his peaceful intentions, have increased their forces also; and for A to disarm or reduce his expenditure would place him in an inferiority to certain others of whose designs he entertained strong suspicions.

Now it chanced that B wanted his loan for a very different purpose. Though his estate is similar in its general composition to that of A, it is far more happily situated. B is at peace with his neighbours; he and his forebears have been at peace for nigh a hundred years. There are, to be sure, some guns and rifles scattered about the estate, and a few of B's people have become expert in using them; but their proficiency has been acquired through practice of the art as a sport or diversion rather than because of any serious thought of its becoming necessary for self-defence. Therefore B has no thought of buying guns, ammunition and war craft with the proceeds of his loan. There is a considerable portion of his property which has lain waste for years. So far from yielding any revenue it has added to his annual cost and has been a source of annoyance and hindrance in a number of ways. B has conceived a plan which will certainly make of this sterile land a fair and fertile plain; and it is to put that plan into effect that the half-million dollar loan is necessary. He too has securities which readily command the services of the money-lenders. The knowledge which the latter have of the purpose for which he needs the money, makes them even more ready and willing to provide the funds than they were to provide funds for A's loan.

The works of improvement are therefore begun, and pressed to a speedy and skilful conclusion. While they are in progress the estate presents an extraordinary aspect of business activity. There is strong demand for the output of the farm and of the mills. The need for labour is so great as to call for the services of every man on the place as well as a company of imported specialists. Then, when the thing is finally completed, what was a desolate, disease-breeding marsh, has become a rich and pleasing tract, which will ultimately be made to add $100,000 per year to the net income of the estate, and which will perhaps increase the value of the whole property by a million and a half dollars.

Here in brief we have the difference between borrowing for war preparations and borrowing for productive works. Both these borrowers have to provide say $25,000 per year extra as interest on their loans. Just look for a moment at the manner in which their ability to raise the extra money has been affected. A's guns, vessels, and soldiers contribute nothing to his revenue; on the contrary they are a continual source of expense. The efficiency of his farms, mills, and other wealth-producing agencies has been impaired through the withdrawal of men and energy from them to the business of soldiering, and, finally, the business of the estate suffers because the master-mind is not able to give so much of his attention and thought to its maintenance and improvement. So A's revenue is materially decreased, his permanent expenses materially enhanced, irrespective of the new annual interest charge of $25,000. Expenditure of the loan proceeds, so far from having given him any increased income wherewith to meet the interest charge, has saddled him with an annual expense, apart from the interest, of perhaps more than $25,000 a year, and lessened his usual income by as much again.

How different is B's case! His property has increased in value by an amount equal to twice or three times the amount of the loan; his income increased three or four times the amount of the new charge for interest; the efficiency of his men, and their comfort and that of their families increased through the removal of the swamp. It is very easy to see that he has taken a long stride forward in wealth and material prosperity, and just as easy to see that A's position has deteriorated.

In the cases of A and B, imagine this transaction of the half-million dollar loan to be repeated twice or three times in the same way and for the same purposes respectively, and you can see how certainly and swiftly A is headed for bankruptcy and impotence, and how certainly B is making his way to wealth and consequence.

In a homely and imperfect manner the above illustration may serve to show in very broad outlines the different economic effects of the war borrowings of some European nations and of Canada's borrowings for railways, canals, and public works. It should be noted also that in the illustration no account was taken of actual war; it was merely the effect of war preparation that was brought out. In actual war, between great nations, valuable

productive works are destroyed by the million dollars' worth, to say nothing of the destruction, in thousands, of valuable human lives.

At the present time in Europe the outstanding circumstance is the evident determination of the rulers of the German Empire to challenge the British naval supremacy. Already Germany possesses the most powerful army and military establishment in the world. To that it is proposed to add a fleet capable of standing against even the British fleet. At this stage it is not possible for any one to forecast the probable political outcome of this new German policy. It is plain, however, that it is regarded as alarming in other European capitals than London. One most probable result is a combination or alliance between Britain, Russia, France, and Italy, with the avowed object of defence against and restraint of the German power. Already there are strong indications of a closer union of these four great powers than has previously existed. Since the revolution in Turkey and the recent Austrian seizure of Bosnia and Herzegovina, the interests and sympathies of Turkey incline more decidedly against Germany and Austria. Outside Europe, Japan already is a party to an alliance with Britain. And the feelings of the Japanese towards Russia have undergone such a change since the late war that Russia's presence as an ally of England would not now incline Japan to the opposite side. So far as the United States are concerned their real interests unquestionably lie in supporting the British-Russian-French party, but it is hardly possible to assume that they would do so. Quite probably strict neutrality is what they would aim at. These things have all to be considered in a discussion of the financial and economic effects likely to follow the perseverance by Germany on its present tack. If this great military and naval power were in other hands its existence might not produce the same effect. But all Germany's neighbours, who remember the suddenness and unexpectedness with which she sprang on France in 1870, will not wish to stand still while she is increasing her armament. Consequently her new policy is certain to give a great impulse to the war-borrowings and to the development of military and naval establishments in the four great states by which she and Austria are surrounded.

A fact of the greatest importance in this competition is that the power of the purse resides in France and England. London

and Paris combined have it in their power to quickly develop and strengthen the military resources of Russia, Turkey and Italy by supplying funds for that purpose. They could also, should they be moved to take that course, materially restrict the ability of Germany to raise loans for her purposes. So far as the United Kingdom is concerned, though heavily taxed, she has not yet been driven to borrow. It is not certain that the people of the United Kingdom are taxed heavier, or even as heavily, as are the people of Germany. Freedom from customs taxation recompenses the British citizen for a great deal, if not all, of the heavier load he carries of direct taxation.

These few considerations show that the British position is by no means desperate; that there are in the hands of our Imperial Government cards strong enough, if wisely handled, to make it exceedingly dangerous for the German Empire to aim too directly at wresting from Britain that naval supremacy which she holds so dear. Some foreign critics have pointed out that the British have no divine right to naval supremacy, and that it is clearly the right of any nation or people to strive for it if their interests seem to make it desirable for them to do so. That argument may be conceded. But it remains nevertheless that Britain is now acknowledged as the greatest naval power, that she has held the supreme place for 150 years, and that she will stake her last shilling and spend all her energy to hold it against competitors considered as menacing her safety. It may well develop, before this struggle is over, that the German people will discover that they would have been better off in many ways had they not aimed to bring their military and naval power to such high development.

In the meantime Germany is borrowing by the hundred million dollars. Russia will be borrowing to the same tune. Even England and France may borrow in their domestic markets. A large part of the proceeds, and of the proceeds of extra taxation, is bound to go into great warships, guns, military and naval stores, the up-keep of which will call for additional expenses each year. In all those countries, except possibly in Britain, more men will be taken from agriculture, from the mills and factories, from the mines and from other pursuits and industries to learn the trade of soldiering. If conscription is introduced into the United Kingdom, as the military experts say is neces-

sary, the same thing will happen there. The mines, the fields, the factories become less productive or are operated at a higher cost, in other words, the ability of the people to bear taxation decreases, or does not increase as it should, while the taxes get heavier and heavier. It is true that some part of the expenditures for military purposes have a reproductive value. Thus railroads are built sometimes as a means of strengthening the military position, and they result in a betterment of the condition of the people in the localities served by them. They also may remain an asset with steady commercial value. But it is not many of the articles purchased or built for war of which this can be said. Most of them have no real value as commercial assets and are destroyed or deteriorate very quickly indeed.

If that sort of thing goes on in Europe at an accelerated pace, one very probable effect is that all the purely European nations will steadily deteriorate in real strength in spite of their armies and fleets. There is not one of them, our own British Empire included, that possesses anywhere near the resources available for paying for navies and armies that the American Republic possesses. If the United States chose, or if they were driven to do so, they could expend a great deal more for military and naval purposes than any nation in Europe is spending, and the expenditure would entail much less effort.

The other day the military and naval departments of the Washington Government presented their estimates or statements of appropriations required for 1911. In deference to the well known wish of the country, and to the wish of the President, for economies, they had cut the total down till it was $10,000,000 less than the total that stands for 1910. President Taft is reported to have sent back their bills with the intimation that it was his wish that a further reduction of about $18,000,000 be effected. It may be that action of this kind at Washington will prove more effective than any direct representations would be, in inducing the European powers to abate their progress. On reading this news from America doubtless the administrative heads of every country in Europe would devoutly wish their circumstances were such as to permit them to take the same course as that taken by the U. S. Government; and there is just the chance that the wish may make action in that direction less difficult. But, of course, it is to be conceded that the United States

are most happily circumstanced in this respect. They are so rich, powerful, and inaccessible that no European or other power would dream of attacking them. They can, therefore, well and safely reduce their expenditures for armament.

Our situation in Canada is somewhat complicated. As a part of the British Empire we naturally are deeply concerned in the maintenance of the British naval supremacy, and we are impelled to do our part, in some way, in Imperial defence. At the same time there appears to be a wide-spread disposition in the Dominion to regard the German danger as not so menacing as it appears to our kinsmen in the home islands. In other words many Canadians are inclined to dismiss the subject lightly with the idea that the United Kingdom is experiencing an attack of "nerves." Judging by the press utterances there is by no means a general recognition amongst the Canadian people that the present crisis is urgent or important. Then there is to be reckoned the well-known wish of the people to keep out of European politics, troubles, and warlike expenditure. If there is one thing firmly impressed on the minds of Canadian farmers and artisans, it is that those expenditures are an execrable waste of money. And before they would willingly submit to increased taxes for that purpose they would have to be fully convinced as to the necessity thereof.

Then we have never borrowed heavily for anything like that. Our loans have been for the purpose of buying the Northwest from the Hudson's Bay Co., the building of the Intercolonial and of the Canadian Pacific, for digging and completing the St. Lawrence and Welland canals, for harbour improvements, subsidies and encouragement to other railways, and, just now, for the National Transcontinental and Grand Trunk Pacific. When we consider what an important effect these undertakings have had on our development it strikes us very forcibly that it pays far better to go in for that kind of expenditure than to buy warships, powder and shot, guns, etc., and meet a big payroll made up of the names of soldiers, sailors and officers.

Of course, there is to be considered the argument of the military imperialists who say that as we increase our wealth and possessions we must also increase our means of protecting them. A rich, inviting property lying helpless and undefended before the eyes of hungry and powerful neighbours is apt to be plund-

ered or over-ridden. Then there is the other argument of our having enjoyed the protection of the British fleet without contributing directly to its support and maintenance. Both these arguments have considerable force, and it is but natural that their pressure should impel us in the direction of spending more for war material. And in our present circumstances to spend more means to borrow more.

At the same time the people have the right to expect that the Government shall exercise the utmost care and circumspection in proceeding on these lines and in committing Canada to a definite policy. If we take unwise steps they may have momentous consequences. Thus we might acquire an auxiliary fleet of small war craft, ostensibly to support the British fleet, and the circumstance might conceivably disturb our relations with the United States or incline that powerful nation against Great Britain. When it was announced in the Parliament at Ottawa that we probably would follow that policy, so unwarlike a paper as the New York *Evening Post* expressed the wish that we keep not our new fleet in domestic waters, for if we did it would surely result in pressure from American jingoes in Washington to build warships specially against us. There are, doubtless, many people in both countries who behold with regret the indications now to be seen that the old treaty abolishing war craft from the great lakes is in danger of abrogation. First the U. S. sent up its half dozen small warships as training ships. Just now we have followed with a warship to be used as a lighthouse tender and there is talk of a shipbuilding establishment for turning out war craft, to be erected at a Georgian Bay port.

Nothing is more certain than our inability to build warships against the United States. If they are determined to be superior to us in force upon the lakes nothing we can do will prevent them. Nobody but crazy lunatics will wish to see competition of that kind on our inland waters. For if it goes on and there happens to be a tariff war precipitated by the coming United States tariff, no one can tell what might develop.

The problem presents some difficult features, and one may see from the foregoing, that there are some respects in which it would be better for us to contribute towards units in the British fleet than to run any risk of clouding or disturbing our happy relations with our southern neighbours. It is, of course, unde-

sirable that we should lie too weak and helpless before their eyes; but we have to remember that we may lessen our safety by a too-great increase in our forces. Unarmed, we are in reality safer from their aggression than some of our folks would have us believe. The parties and influences in the United States who are opposed to the warlike or imperialistic idea are uncommonly strong, and they grow stronger every day. They could hardly be got to support a war of aggression against us. Then Canadians are thickly scattered in New England, the Eastern States, and in all the border regions. Sentiment there would be overpoweringly against any disturbance whatever of the peaceful status. But let us begin to arm, and, as the New York *Post* says, we give a handle to the American jingoes. If it is at all possible, the best course is to avoid these troublesome questions, to ensure that they shall never arise.

Like B, in the illustration at the beginning of the article, we are headed strongly towards great wealth and power. What we borrow from London provides us with the means of increasing our productive capacity to many times the extent of the annual charge necessitated for interest. Also it might be said that the expenditure of the money in most instances perhaps, results in enhancing what may be called the national assets or capital by an amount several times as great as the addition to the debt. For example take our present borrowings—for the building of the new Transcontinental Railway—and consider the many and varied ways in which they are contributing and in which they will continue to contribute to increase our income and assets. Suppose for the sake of argument that the Government of Canada borrows say $150,000,000 for this purpose at a cost of 4 per cent. Our annual interest outgo is increased by $6,000,000. What do we get for it? By way of reply let us follow this stream of funds as it takes its fructifying course through the land.

The first effect of the coming of the proceeds to the Dominion is an increase in the resources of the Canadian banking institutions. To be strictly accurate, expenditures such as this exert a considerable effect upon the economic situation long before the actual transfer of capital takes place. As soon as it is definitely established where the new railway is to run and where the divisional points are to be, new settlers flock into the good farming sections along the route, tradesmen, and other business

men establish themselves in the newly created towns and villages. Many of these newcomers will be from outside countries. Every one will bring his quota of capital to be used for the upbuilding of the new territory. The capital of one will be in the shape of cash, that of another may consist nearly altogether of brains or intelligence; the endowment of a third may consist merely of the capacity to work hard with his hands. All of them play their part and assist materially to create new wealth and capital.

It is sometimes thought that when people move from one part of Canada already settled (such as the older sections of Ontario, Quebec, Nova Scotia, New Brunswick), into a new district in the north or west, that the economic gain to the country is considerably less than if a settler comes from outside. That conclusion is open to question. If it is a storekeeper in an eastern village who sells out and opens in Melville, Wilkie, Hosmer, or another of the new western towns, his place in the east is taken either by a newcomer or by some one in the locality who may not have been previously engaged in the service of his fellows on a scale of that kind because of lack of opportunity. In any case the store business in the east is usually continued, it may be on a more efficient basis, and the country gains the store in the west. The same when a farmer in Ontario starts up in Saskatchewan or Alberta on new land. If he sells an eastern farm either a new comer will buy it or a neighbour secures it for a son just come to manhood. Thus the farm in the east is as productive as ever; and the country gains the farm in the west.

But it is time to go back to the task of tracing some other effects of the spending of the proceeds. The funds, as we have seen, lie in the banks at credit of the borrowers. They are transferred eventually to contractors who distribute them to armies of workingmen as wages, and to iron merchants and other merchants for tools, supplies, machinery, etc. Some considerable part has to be sent abroad for material purchased there. Wherever the gangs of workmen are concentrated a busy scene of mercantile activity springs into life. There is buying and selling, transportation work, amusements, and most of the business transacted in permanent settlements. As the building of the iron highway proceeds, there are formed here and there permanent towns. These will be at points where existed the means and conveniences for developing important industries. For the road

traverses a district where lumbering, manufacturing, mining, farming, will spring into existence at a hundred points just as soon as railway transportation is available. Every one of these forms of activity will contribute its millions to the wealth and income of Canadian citizens; every one will contribute materially to the Dominion's power and influence. More than that—many of these new places will serve as bases from which a further advance into unexploited territory will be made, doubtless bringing immense additional latent resources into operation and view.

Through pursuing these reflections still further it is easy to see how the wise expenditure of these loans on reproductive works creates the means of paying the interest with a handsome balance to spare; how it ensures that there will be, growing up against the day named for the redemption of the loan, a new property or asset, in value far overbalancing the amount of the debt. The Cabinet officials estimated that after 10 years the rentals, etc., received from the G. T. P. would meet the interest charge on the debt created for the National Transcontinental. It would not be unreasonable to expect that in five years after the system goes into operation the new road will have brought about an increase in the customs, excise, and other revenues of the Government amounting to perhaps double the interest on the debt created for the purpose. Every one of those new towns and villages will contribute customs taxes, some of them will contribute heavily. Then many residents of the older established districts will find their incomes materially increased by reason of the farms, mines, factories, forests, etc., created or utilized along the right of way. Thus they too will be impelled to buy imported and domestic articles more freely, and their doing so must have a beneficial effect upon the national revenue. This is apart altogether from the rentals and profits paid or earned by the railway itself.

Then there is the very important matter of the effect which the new line will have, which it has had already as a matter of fact, in increasing the population of the Dominion. To become a great country we need population quite as much as we need capital. The new railway will be exceedingly serviceable in attracting both.

Perhaps enough has been said to show plainly how overwhelmingly the benefits derived from a policy of expending pro-

ceeds of loans for productive works exceed those derived from expenditure for warlike or military purposes. For Canada there is nothing at all attractive in the latter course. Indeed, it is worse than non-attractive; it is positively repulsive. What money we spend that way should be spent only as a strict necessity. If Canada and the United States can, with honor and safety, keep out of that mad race that is going on in Europe, and the transatlantic nations persist in squandering their resources, it is altogether likely that the end of the present century will see in North America two great Anglo-Saxon powers, with interests closely connected, before which even a combined Europe will hardly dare to stand.

H. M. P. Eckardt.

CONTRAST IN ECONOMIC POLICIES.

CLOSE-reckoning British investors usually self-centred, and vociferous speculators, all of them familiar with the blandishments and importunities of the venturesome throughout the spheres, are now lending themselves to a mining "boom," such as certain sections of the Canadian public would promote and such as other no less enterprising sections of the public are determined to prevent. The London "banker, the baker and candle-stick maker," from the Channel to the Arran Isles, are reported to be dealing heavily in what are generically defined as "Kaffirs." So imposing is the swinging movement, the correspondent of *The Financial Post* leads off with a description of what is happening and the assurance that the cosmopolitan habitues of Throgmorton street, within and without the Stock Exchange, are "absorbed in the speculation in progress in South African Gold Shares."

Ordinary and extraordinary readers and visitors to the British metropolis hardly will comprehend this, so deliberate is the befrocked, seemingly impassive, and invariably keen arbiter in negotiable propositions. London is properly regarded as one of those great bodies which move slowly. It is our court of last resort, being the dispenser of credits. Considering its accustomed diffidence no doubt, the correspondent of the *Post* thought it necessary to emphasize the extent and cause of the "flutter in mines." He therefore states that "not since 1895 has there been such activity as was experienced during the end of May account. On the eve of and immediately after the Whitsuntide vacation this buoyancy has been well maintained. The continent is now beginning to take a hand, and if Paris and Berlin get 'Kaffir fever' we shall see all previous records outstripped; even New York buying orders have been coming to hand during the last few weeks, and South Africa is, of course, participating strongly in the upward movement."

Were this written of Canada's mining shares there would be "wigs on the green" in domestic banking circles, even though

leading mine-owners registered the assurance that there "is no longer speculative risk but a sound commercial proposition." Of the yellow metal it is contended, with force, that it possesses "the inestimable factor of security of the product selling at a fixed price, irrespective of the quantity produced." Of the white and base metals constituting a large measure of Canada's mineral resources, no such argument is possible; yet the attitude of London, the Bourse and the Boersen, in contradistinction to current experiences on this side of the Atlantic, at least might serve to organize intelligent sentiment for and against mining markets.

It has taken these old country financial centres fourteen years to muster courage enough to again believe that the sounder Witwatersrand mines are commercially feasible. A violent "boom" the 1895 *débacle* incident to the Jamieson Raid, followed by the war, the wrangle over Chinese labor preventing the acquisition of fresh capital, and a racial conflict only recently terminated, gave to the gold industry a penitential period from which no one concerned was exempt. The most optimistic who understood the potentialities of the mines were unable to regain confidence. Underwriting syndicates declined to further finance what had yielded more of regret than of dividends, until it finally became manifest that errors of estimation commonly described as overcapitalization, and disregard of economies essential to the redemption of principal with interest thereon, were rectified and cures enforced. For years the best of script was begrudgingly accepted as collateral by bankers. Curtailment of credits applied to £300,000,000 figuring in nominal issues left South Africa disconsolate, to say nothing of Europe, and shareholders hardly any less so. Diamond mines, owing to the increasing demand for precious baubles, prospered in obverse ratio to that of the distressed gold mines. Whether the altered circumstances, "never brighter" owing to the "decline which has occurred in working expenditure," and recent amalgamations in the nature of reorganizations, be permanent in their influence upon the gold mines, the object lesson thirteen lean years conveys to Canada suggests analogous review.

Rossland was a triviality when compared with the wreckage precipitated upon South Africa in 1895. The difference was that Canada became slightly delirious when it should have adhered to

its policy of agricultural and strictly commercial development, whereas South Africa was peopled by Abantu tribes, nomads, haphazard farmers and forwarding agents, when diamonds were discovered at .Kimberley, and the knowledge there obtained led to the revelation of the greatest of gold fields at Johannesburg. Canada need not have been diverted—and was not perhaps, notwithstanding the prejudice against Rossland and Cobalt remaining. South Africa had no alternative other than to seek the diamond fields and participate in the development of the gold fields, because farming was precarious, epidemics among cattle of frequent recurrence, and the monotony of veldt life was as stale as agriculture was unprofitable.

Inevitably Africanders and British Colonists concluded the diamond and gold industries were prime movers. South Africa thus became a two-industry country—and the farmer there who does not claim to have economic minerals of some sort upon his premises, is the rare exception. Likewise the average urban resident has dabbled in shares. Banks were wont to make advances upon regularly listed script, and London, Paris, Berlin, Vienna, Continental financiers generally, gave what Canada could not very well do otherwise than deny when it was clear that the sciences misapplied to its mining were subversive and altogether foreign to the popular desire for modulated progression rather than speculative violence.

Africa, beyond the Zambesi, received its impetus from mining. Canada's first repulse was at Rossland. Now-a-days, however, the situations are reversed, and what Canada aims at throughout its mineralized areas from Cape Breton to Dawson, as auxiliaries to its national expansion, the new order of things at South Africa would attain to more and more through the medium of the kraal and the plough-share. In one instance the agriculturist will soon require diversity and domestic markets. On the other hand, with the "speculative chances," no longer attractive, and mining established, colonists are availing themselves of the mines for settlement purposes and permanent institutions. Those mines are not everlasting. Even the most recalcitrant Boer now accepts the post war formula of Lord Milner: "Get the wealth out of the mines and put it back into the soils."

That prescription was nauseating to the Boer and Briton who apprehended the exhaustion of the mines. As a counter irritant regulated production was urged, despite the contention that capital would not seek a vacuum offering prolonged agonies and deferred return. What colonists feared was their too-precipitate and compulsory relegation to pastoral avocations before other industries matured. What Canada has studiously discouraged was a deflection along speculative lines lest the story of a young giant in a hurry have too many tragic chapters. To-day Canada's policy has precedence in that it receives more from the Empire than it gives, the record for the year ended June 14th showing that $157,500,000 of British capital went into our Governmental, railway and public issues and that the return was $38,000,000. "Can we wonder," invidiously reasons the *Canadian Gazette* in comparing this latter result with the $135,000,000 obtained in dividends from the United States, "that Britain is in no hurry to quarrel with the States." The inference may suggest itself, but the assumption that the $135,000,000 is applicable to the $67,500,000 advanced during the year to the States by Great Britain, is as untenable as the belief that the Motherland will continue to finance our Government, the railways and *quasi* public works unless they proportionately benefit from the collateral business created with their credit. "Can we wonder" why, by the same illogical argument, Great Britain is dissatisfied with 24 per cent. upon its $157,500,000, if that was the total of British investments?

Evasion of the income tax probably minimizes Canada's yield to British investors. Granted that the encouragement of this is no part of Canada's programme, none the less is it patent there must be a rapprochement by which Great Britain will more frequently join in the industrial exploitation of natural resources offering guarantees unobtainable under other national auspices. It may not be in precious metal mining that this will best be secured. That is for Canadian men of affairs primarily to predetermine and then to offer themselves as patrons. Heretofore this sponsorship has been lacking. Without it "can we wonder" that the more agile trader across the border rides into opportunities arising out of basal credits extended to Government, railways and power projects, and from agricultural expansion.

Insularity as voiced in the antidote for Milnerian "economic heresy," and the urgency for what the Imperial High Commissioner espoused at South Africa, permit of this discussion of Canadian and South African industrialism. Both countries, though climatically antipodean, were founded upon agricultural bases. Rugged human types were the result, and insusceptibility to privation were common heritages of the voortrekker and early settlers in Lower and Upper Canada. Intrepidity in the forest and field, perennial combats with the elements, familiarity with nature's truisms and vagaries, blazing trails, were the introductions Canadians and Africanders received to the nineteenth century. Consequently diversified avocations were limited and there was little attempt to encourage innovations not identified with the land, its cereal products and its availability for live-stock.

South Africa had neither lumber nor water powers of importance; therein it differed from Canada. There dependence always has been upon a haphazard, rainy season enabling agriculturists to store their waters; latterly, to irrigate. On the other hand, Canada's density of foliage and timber growths bespoke fertility, although multiplicity of navigable and otherwise economic waters, in the absence of creature comforts sought by settlers, were involved in a climatic doubt—a doubt that solved itself wherever energy was supplied and dogmatizings about meteorologics were allowed to remain in the Motherlands.

At the subtropics agriculture always was handicapped by seasonal eccentricities and the inaccessibility of numerous active markets. Either it has been "a feast or a famine," whereas Canada's rigorous zones always were vibrant with natural opportunities. Given rainfall at frequent intervals the trans-Zambesi territory would be self-sustaining in every respect. Its corn would become a more staple source of profit, and its beef could be made in competition with the Argentine. Supplied with the credit its domain invites Canada has enough and to spare for the world and his wife without the "boomster." Departmentally it is all-sufficient, but it ought not to be felonious to promote mining industrialism contemporaneously with the cultivation of cereals, any more than is it to be supposed that the mineral resources are secondary and subordinate. Instead of that the revival of investment interest in the greatest source of the world's gold supply and the consciousness that Canada with its copper,

nickel, asbestos, coal and incomparable silvers should be a country of consumers and producers with reasonable speed, raises the question whether the most is being made of our mineral resources. The banker is deterred from industrial aggression, being preoccupied with the more fixed quantities. He is somewhat militant toward mining. Given a greater degree of authenticity in connection with this form of reproductive industrialism, he could afford to be more lenient toward the manufacturer, perhaps, because the products of the capably managed and modestly capitalized mining corporation are among the quickest assets. South Africa without its $150,000,000 per annum in gold bars and $30,000,000 or $40,000,000 in diamonds, would have a sorry lot of farms. Though more fortunate, Canada might well reconsider its attitude toward its mines, quite apart from share movements—and in so doing assiduously devote itself to a sense of discrimination by which the verities of mining will not be confused with the vices. Rand mines were wonderfully procreative. Why not Canada's. Already the annual mineral production of the Dominion closely approximates the paid-up capital of our combined banks. Even that total of $87,323,849 for 1908 is unrepresentative of and altogether out of keeping with the national desire for more sympathetic capital, to be denied unless the mineral resources are demonstrated by those racially concerned.

ALEX GRAY.

MONOPOLY AND RESTRAINT OF TRADE.

ON the 23rd of March of this year, judgment was delivered by the Privy Council in a Quebec case which the trial judge regarded as "the most important one that has ever been brought before a court of justice in this Province." The case was that of *The United Shoe Machinery Company of Canada* v. *Brunet;* it dealt with the monopolies and also with contracts in restraint of trade.

The importance of the litigation was hardly over-rated by the trial judge. The case had aroused unusual interest, particularly amongst those who had been induced to invest money in companies whose object was to manufacture shoe machinery in opposition to the United Shoe Machinery Company, and had seen in the judgments of our Provincial courts, adverse to the Company, a moral revenge, if not a pecuniary compensation.

The facts, briefly, were as follows:—

The plaintiff, the United Shoe Machinery Company of Canada, is an offshoot of the United Shoe Machinery Company, Boston. It manufactures at Montreal or imports from the parent company machinery for use in the process of manufacturing boots and shoes. It thus deals with various kinds of machines, which cover every operation in the manufacturing of shoes. This manufacturing requires at least seven principal operations, each of which is to be performed by means of a different machine. These machines are not sold by the United Shoe Machinery Company of Canada, but leased for periods of twenty years, under invariable conditions.

Between the months of October, 1903, and June, 1904, the firm of Brunet, Lachance & Tanguay, shoe manufacturers, of Quebec, leased from the company shoe machinery of four different types. The leases contained, among others, a clause to the following effect:—

"The leased machinery shall not nor shall any part thereof be used in the manufacture of any boots, shoes, or other foot-

wear which are or shall be welted or the soles stitched on welt-sewing or sole-stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or metallic machinery not leased to the lessee by the lessor or its assignor."

In plainer words, the manufacturer bound himself by the clause above cited, that the machines then leased were only to be used on boots and shoes, on which no operations would be performed by means of machines other than those of the United Shoe Machinery Company.

At that time, the Brunet firm was provided with lasting, "metallic," heeling and pegging machinery which had been supplied to it by the company.

The company had a competitor in the person of one Caron, whose shoe machinery the Brunet firm had been using to a limited extent prior to 1903, and who, in 1905, succeeded in selling to Brunet some more machines, and in inducing him to disregard his previous covenants with the company so that in May, 1905, the firm notified the company that it had ceased using its "allied machines," namely, the lasting, heeling, pegging and "metallic" machinery, and required it to take them back.

In July, 1905, the company took injunction proceedings to prevent the Brunet firm from using the machines leased in 1903 and 1904 in the manufacture of boots and shoes which might be pegged, slugged, heel seat nailed or otherwise partly made by the aid of heeling, pegging or "metallic" machinery other than that leased to the firm by the company.

The objections raised against the granting of the injunction were the same as were urged afterwards in the plea to the action, but a temporary injunction was granted to the company by Sir C. A. P. Pelletier.

After the granting of the injunction the action was served, asking that the firm be condemned to pay damages to the company, and that the temporary injunction granted be declared per-

petual. The Brunet firm resisted the action strenuously, filing in substance the following pleas:

1.—The leases were signed in error, under the influence of false representations made on the part of the company to induce the firm to sign the leases.

2.—Moreover, the leases signed are null and void, and not binding, since they create a monopoly in favour of the company, and are contracts in restraint of trade.

The Court of Appeals having held, adversely to the plaintiff's contention, that an action of this nature, accompanied by the prayer that the injunction granted be declared perpetual, was properly triable by jury, twenty-three questions were framed and submitted to a jury, presided over by Mr. Justice Cimon.

The trial lasted for over three weeks, and the evidence adduced is voluminous. After it was reviewed and commented upon by the counsel for both parties, the trial judge charged strongly against the company, and the verdict of the jury was in the same sense. Judgment was rendered in conformity with the verdict, dismissing the action and dissolving the injunction.

On an appeal by the company to the Court of King's Bench, the jury's verdict was affirmed, Mr. Justice Trenholme dissenting on the questions of monopoly and restraint of trade.

Finally, on the 23rd of March, 1909, the Privy Council reversed the judgments of the Quebec courts, maintained the action and injunction, and condemned the defendant firm to $1.00 nominal damages, and to costs in all courts.

We will now examine briefly the attitude of the courts on the various pleas urged by the defendant firm.

The false representations complained of by the defendants were to the effect that when the leases were signed, the defendants were led to believe that all the machines supplied to them by the plaintiff were protected by Canadian patents.

This question of false representations is not of general interest, but it must be mentioned briefly in order to give a fair idea of the whole case, and besides it is intimately connected with the question of monopoly. It also illustrates the danger of presenting to jurors, no matter how honest and intelligent they may be, numerous and complicated questions.

The trial judge, in his charge, had said:

"Mr. Brunet told us frankly that he signed the contracts "not because these representations (that each of the machines "of the appellants was protected by a Canadian patent) were "made to him, but because he could not get the machinery elsewhere."

Nevertheless, the jurors unanimously stated that the leases were signed on the strength of appellant's representations with regard to its Canadian patents (question 12); eleven jurymen declared that these representations were false and fraudulent (question 13), and nine out of twelve assented that the appellants had represented themselves to the public as being patentees of these machines and having the sole right to manufacture and license the use thereof throughout Canada (question 16).

Again, they found unanimously that no proof had been adduced of the existence or non-existence of patents covering appellant's machinery (questions 18 and 19).

In Appeals, Mr. Justice Trenholme, while dissenting from the judgment of the court on the questions of monopoly and restraint of trade, declared that there was enough evidence in Brunet's mouth and in the leases themselves to prevent him from saying that a judgment annulling the leases for false representations as to patents was without proof and bad.

The Privy Council, however, disposed unhesitatingly of the defendants' contention regarding misrepresentations.

The judgment of their Lordships is in the following terms:

"The burden rested on the respondents, viz., the firm of Brunet, Lachance & Tanguay, of establishing, either by the admission of the appellants, or by the findings of the jury, the following conclusions of fact: (1) That the representations complained of were made by the appellants to the respondents; (2) that these representations were false in fact; (3) that the appellants, when they made them, either knew they were false, or made them recklessly without knowing whether they were false or true; (4) that the respondents were thereby induced to enter into the covenants contained in the leases; and (5) that immediately on, or at least within a reasonable time after, their discovery of the fraud which had been practised upon them, they elected to avoid the leases, and accordingly repudiated them.

"Of these the last is the most vital, in the sense that it is the condition precedent which must be fulfilled before the respondents can escape from the obligations of the contracts they have entered into, however fraudulent those contracts may be.

"A contract into which a person may have been induced to enter by false and fraudulent representation is not void, but merely voidable at the election of the person defrauded after he has had notice of the fraud. Unless and until he makes his election, and by word or act repudiates the contract, or expresses his determination not to be bound by it (which is but a form of repudiation), the contract remains as valid and binding as if it had not been tainted with fraud at all.

" In the present case, it was proved in evidence, and not disputed, that though the respondents had on the 15th May, 1905, if not before, so satisfied themselves that they had been defrauded that they called upon the appellants to remove the allied machines, yet they retained in their hands, and continued to work the machines demised by the " leases sued on" up to the 21st July, 1905, the date of the interlocutory injunction, and paid in respect of this period the royalties reserved by these leases. In no more emphatic or unequivocal way could the respondents have shown their intention to treat the leases as subsisting. In the face of this evidence it is natural that the plea does not contain an averment that the respondents repudiated the " leases sued on." The matter is, however, obviously disposed of by the findings of the jury in answer to questions Nos. 7 and 8 left to them.

"These answers taken together amount, at the least, to a finding that the respondents did not, before action brought, avoid the contract, if not to a finding that they affirmed it. For the party defrauded cannot avoid one part of a contract and affirm another part, unless indeed the parts are so severable from each other as to form two independent contracts. Nothing of the kind exists in the present case, for the covenant in the lease which is objected to merely prescribes the mode in which the thing demised is to be used."

The leases not being annulled for false representations, the questions left for their Lordships were those which are of public interest, namely, whether these leases created a monopoly, or were contracts in restraint of trade.

The contention of the defendants was thus summarized by their Lordships:

"The appellants have acquired a practical monopoly of the manufacture of shoemaking machinery by the combined operation of the three causes following:—(1) the superior excellence of their manufacture; (2) the belief entertained in Canada by manufacturers of shoes who require machinery of this kind for the successful conduct of their trade, as well as by the general public, that the appellants hold patents for all the machines produced by them, and that machines similar to those of the appellants could not be obtained from others or used in Canada without incurring the risk of being sued for infringement of the appellants' patents, and (3) the operation of the clauses contained in the latter's leases, especially the so-called "tying-clauses."

The trial judge's charge to the jury defined a monopoly as follows:—"A combination, the tendency of which is to prevent competition in its broad and general sense and to control prices to the detriment of the public."

After having answered in the affirmative the questions whether the plaintiff company is owned and controlled by the United Shoe Machinery Company, of Boston, the jury had to answer the following questions regarding monopoly:

"15.—Has the United Shoe Machinery Company of Boston obtained and exercised for some years a monopoly of the manufacture of shoe machinery and imposed such monopoly upon the shoe trade in Canada, either directly in its own name or through and by means of the company plaintiff?

Answer.—"Yes (unanimous)."

In answer to question 18, the jury found that the representations as to patents referred to in question 16, "formed part of a system adopted by the plaintiffs and their predecessors for imposing upon the shoe manufacturers of Canada the monopoly of the supply of shoe machinery."

Question 21 was in the following terms:—

"Do the said contracts have the effect of creating a monopoly of the supply of shoe machinery in favour of the plaintiffs, and, if so, does such monopoly hamper and unjustly oppress the manufacturers of shoes in Canada and impose a great burden upon the public?

Answer.—"The answer is, that it is a monopoly. We do not say how far it is a burden on the public (11 to 1)."

The last part of this answer was the object of different appreciations from the judges of the Court of Appeals. The Privy Council adopted the view of Mr. Justice Trenholme, and said: "It may mean that it is no burden at all, or is not an appreciable burden, or is a real burden, but that they cannot measure the extent or weight of it." The test of the legality of a monopoly, namely, the injury to the public, was therefore missing.

On the question of monopoly, the jury simply followed the instructions of the trial judge, who had said: "The terms of these leases also create a monopoly in favour of plaintiff, not only of the machinery, but also of a part, a substantial part, of the material used with that machinery."

The jury was not so positive as the defendants' counsel, who described the company as "the octopus which was slowly strangling the poor struggling Canadian manufacturer," a definition which the late Mr. Justice Bossé, of the Court of Appeals, referred to approvingly.

In the Court of Appeals, Mr. Justice Trenholme, dissenting, had stated:—"I do not see that the jury have found even that these leases constitute an illegal monopoly. . . . there is no illegal monopoly. . . . that the court would consider as sufficient to set aside the contract for, unless it be injurious to the public." It is interesting to note that one of defendants' witnesses stated that he operates two factories, one fully equipped with appellants' machinery, the other entirely independent thereof.

The Privy Council, without expressing any opinion as to the oppressiveness of the alleged monopoly, said that if it existed it might be cured by legislation, rather than by litigation, and left these matters to the ingenuity and enterprise of the Canadian people. Legislation of that kind has been introduced in the United States.

The defence resting on the alleged monopoly was therefore dismissed.

The defence based upon an alleged restraint of trade was broader and more interesting for the public than that of monopoly.

The leases of the lasting machines contained covenants on the part of the lessee which may be summarized as follows:—

1. The leased machinery shall at all times remain the sole property of the lessor; it shall not be transferred, assigned, sublet by the lessee without the company's written consent.

2. The mechanisms required to operate, repair or renew the machinery shall be secured from the company at the regular prices, and form part of the leased machinery.

3. The lessee must insure each machine against fire for the sum of $200, payable to the company in the event of its destruction by fire.

4. He shall use the machinery to its full capacity, but not in the manufacture of any shoes on which operations have been performed by means of machinery not controlled by the company.

5. He shall pay a royalty of 1 to 1¼ cent. on each pair of shoes manufactured, the royalty due by each machine not being less than $15.00 per month.

6. Should he fail to use exclusively the company's lasting machines, its tacking machinery and appliances, the lessor may terminate the lease forthwith.

7. The lease is for a period of twenty years, and may be continued indefinitely by tacit renewal, but may then be terminated at the option of either party, upon 60 days' notice in writing to the other.

Upon termination of the lease by the lessor, for any of the causes of cancellation mentioned in the contract, the lessee shall pay $150 indemnity.

8. The lessee admits the validity of the lessor's Canadian patents, and agrees not to contest them.

These clauses, and similar conditions in the leases of the eyeletting and channelling machines, were criticized by the trial judge as weighing heavily on the lessee.

The main reasons given by the trial judge are, first, that a manufacturer having once leased a machine from the company was prevented thereafter from using, in the same factory, any but the company's machines, and second, that the company having acquired a foothold with ninety per cent. of the shoe manufacturers of Canada, no sane man would try and establish a

manufactory of shoe machinery when the largest and best factories were already in the company's clutches.

It may be said in a general way that the courts of the Province of Quebec have always been inclined to listen favourably to a plea based on the alleged nullity of an agreement said to be in restraint of trade, particularly when the plaintiff sought to enforce his contract by means of an interlocutory or temporary injunction.

In the case of *Cook* v. *Brisebois* (1899), Mr. Justice Lynch, while declaring perpetual a temporary injunction previously granted by a brother judge, restraining the defendant who had sold his business to the plaintiff with the agreement 'not to enter the same business again at any time or help anyone to do so,' from entering the employ of a rival firm in the same locality as their manager or soliciting agent, adds: "This case has "caused me some considerable embarrassment, and I am not "altogether certain what I would have done with it had I origi- "nally been charged with its determination."

In the case of *Wampole* v. *Lyons,* Mr. Justice Pagnuelo refused to grant an injunction restraining the defendant, who had bought Wampole's Tasteless Preparation of the Extract of Cod Liver Oil, on condition that he would not resell it at less than a certain price. The reason given for the refusal of the injunction was that the plaintiff did not show sufficient interest in having this agreement enforced, but that on the contrary the plaintiff appeared to be acting in pursuance of an agreement entered into between wholesale druggists to prevent the cutting of prices by the retailers and so protect the small traders against competition by larger traders and departmental shops.

In the Court of Appeals the judgment was confirmed solely on the ground that a trial judge exercises a discretion with which an appellate court should not interfere, and that moreover the contract did not show clearly whether the obligation was taken for an indefinite period or extended to all sales of Wampole's Oil, even when the same was not purchased from the manufacturers themselves.

Under the circumstances the judgment of Sir C. A. Pelletier was a step towards the enforcement of contracts, a view which was accepted by Mr. Justice Davidson in *Silberstein* v.

The National Drug & Chemical Company, Limited, decided June 30, 1909.

There is no doubt that had agreements such as those which formed the basis of the Company's action been submitted to the consideration of English judges a hundred years or so ago, the plaintiff company would have had trouble in enforcing them, but as Leake says, "the trend of modern decisions is to give effect to agreements in restraint of trade, which would formally have been held void."

In the case of *Mogul Steamship Company* v. *McGregor, Gow & Company,* decided by the Privy Council in 1891, Lord Morris' opening remarks are the following:—

"My Lords, the facts of this case demonstrate that the defendants had no other, or further, object than to appropriate the trade of the plaintiffs. The means used were: firstly, a rebate to those who dealt exclusively with them; secondly, the sending of ships to compete with the plaintiffs' ships; thirdly, the lowering of the freights; fourthly, the indemnifying other vessels that would compete with the plaintiffs'; fifthly, the dismissal of agents who were acting for them and the plaintiffs.

"The object was a lawful one. It is not illegal for a trader to aim at driving a competitor out of trade, provided the motive be his own gain by appropriation of the trade, and the means he uses be lawful weapons."

This precedent was cited approvingly by the Privy Council in the present case.

In another famous case, that of *Nordenfeldt* v. *The Maxim Nordenfeldt Gun and Ammunition Company,* the Privy Council, confirming the Court of Appeal (in 1894), held that a covenant by the patentee or manufacturer of guns and ammunition for purposes of war that he would not for twenty-five years engage except on behalf of the company which secured his patent, either directly or indirectly in the business of a manufacturer of guns or ammunition was not, having regard to the nature of the business and the limited number of the customers, wider than was necessary for the protection of the company, though it was unrestricted as to place. In this case, as in the *Mogul Steamship* case, an exhausted review of the case law of England was made, and the judges agreed in stating that a restriction which would

have been oppressive fifty years ago might to-day be perfectly reasonable.

In France, although the law not being exclusively case law, is not so elastic as it is in England, it may be said in a general way that the same evolution, though perhaps less perceptible, takes place in the jurisprudence.

The Brunet case was decided in the light of the principles laid down in the two cases above referred to, in the latter of which Lord Watson had said: "It must not be forgotten that "the community has a material interest in maintaining the rules "of fair dealing between man and man. It suffers far greater "injury from the infraction of these rules than from contracts in "restraint of trade." The remarks of their Lordships show that they do not intend to go back upon the recent jurisprudence. They stated that the question was limited to the presentation to the shoe manufacturers of Canada of the alternative of either doing without these machines altogether, or of hiring them on terms identical with, or similar to, those contained in the "leases sued on." "This alternative, however, does not," they say, "subject the would-be customers of the appellants to any coercion beyond what their desire to promote their own trade interests imposes upon them. By virtue of the privilege which the law secures to all traders, namely, that they all be left free to conduct their own trade in the manner which they deem best for their own interests, so long as that manner is not in itself illegal, the respondents are at liberty to hire, or not to hire, the appellants' machines, as they choose, irrespective altogether of the injury their refusal to deal may inflict on others. The same privilege entitled the appellants to dispose of the products they manufacture on any terms not in themselves illegal, or not to dispose of their products at all, as they may deem best in their own interest, irrespective of the like consequences. This privilege is, indeed, the very essence of that freedom of trade in the name and in the interest of which the respondents claim to escape from the obligations of their contracts.

"The last remaining plea of the defendants having been rejected there remained nothing for the court to do but to maintain plaintiff's action, declare the injunction perpetual, and condemn defendants to nominal damages and to costs, which was done."

What the result of this litigation will be is hard to foresee. Their lordships have not referred in vain the question to the ingenuity of our legislators. Obviously, it is one which will appeal to all agitators and demagogues, and to such members of Parliament whose constituents have been caught in unsuccessful efforts to oppose the United Shoe Machinery Company. The word "octopus," on a husting or within the walls of a Legislative Assembly, is worth half a dozen dilemmas. Moreover public opinion has already been agitated. Important bodies have declared the United Shoe Machinery Company responsible for the money lost through the failures of its adversaries, and the remarks of His Lordship, Mr. Justice Cimon, calm and deliberate, contain enough matter for half a dozen speeches on behalf of the company's opponents.

So far as the United Shoe Machinery Company of Canada is concerned, it has secured from the Privy Council a most satisfactory judgment. How long that judgment will remain law for our legislators, is a question for the future.

E. Fabre Surveyer, K.C.

Q.—In the case of a bank suspending payment, where does the holder of a certified cheque rank? Does he rank with ordinary depositors or has he a prior claim?

A.—He has no prior claim and the drawer of the cheque is released by the bank's acceptance.

Q.—1. Relating to section 84 of the Bank Act, if the deposit be $1,500.00, how much may a married woman withdraw without her husband's authorization?

2. If the deposit be $700.00 and she issues a cheque for $500.00 authorized by her husband, can she withdraw the balance on her own signature?

3. If the deposit be $700.00 and the bank pay her $500.00 on her own cheque, "not authorized," does the remaining $200.00 come under the law and would it need her husband's authorization?

A.—In the Province of Quebec, a married woman, common as to property, can neither have on deposit in one bank nor withdraw more than $500 at any one time.

Q.—Is it a custom to have the rate of interest on a demand loan marked thereon, or is it sufficient to have the words "with interest?"

Is there anything in the laws of Ontario relative to this point?

A.—If no rate of interest be specified then the rate legal in the particular province is the maximum which can be collected.

Question.—Is a bank obliged to accept payment of a note before maturity. Will their refusal to do so in any way affect presentment for payment at due date.

Answer.—The promisor's duty is to pay the note on the day of its maturity. He cannot anticipate payment without consent of the promisee.

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